

THE CHARTER TOWNSHIP OF HARRISON
HARRISON TOWNSHIP, MI 48045
ZONING BOARD OF APPEALS MINUTES
WEDNESDAY, OCTOBER 10, 2007
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ZBA APPROVED – NOV 14, 2007

A regular meeting of the Charter Township Zoning Board of Appeals was held on Wednesday, October 10, 2007 at 7:00 P.M. at Rosso Memorial Hall located at 38255 L'Anse Creuse Road, Harrison Township, Michigan 48045.

A. CALL MEETING TO ORDER:

Meeting was called to order at 7:00 p.m.

ROLL CALL:

CHAIRMAN	ARCHIE LYTLE	Present
VICE-CHAIRMAN	JAMES SENSTOCK	Present
BOARD REPRESENTATIVE	JAMES ULINSKI	Present
SECRETARY/P.C. LIAISON	MARIA ZINGAS	Present
MEMBER	WILLIAM SERVIAL	Present
ALSO PRESENT:	ROB HUTH	Township Attorney
	CYNTHIA CHAMBOS	Recording Secretary
ABSENT:	LAWRENCE MISLINSKI	Absent/Excused

Chairman Lytle welcomed Mr. Huth, Township Attorney, and Darrin York, Township Treasurer, who is working the video system.

B. APPROVAL OF MINUTES: September 11, 2007

Motion by Member Zingas supported by Member Ulinski to approve the meeting minutes of September 11, 2007 as presented.

<u>Roll Call Vote:</u>	Member Zingas	Yes
	Member Ulinski	Yes
	Member Servial	Abstain
	Member Senstock	Yes
	Chairman Lytle	Yes

Motion Carried.

C. HEARINGS and REVIEWS:

1) **Case #11-07-ZBA:** Cheryl Marhevko-Kozera – Petitioner
32873 North River Road, Harrison Twp, MI 48045
Lot 47 and Lot 48 Except 13.25 Feet
Sunny Pointe Shores Subdivision, Harrison Twp, MI 48045
Property #0950-0037-02, Sidwell #12-15-276-029

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Purpose of Request:

Requesting the following variances:

- (1) Requesting a side yard variance of six (6) feet from the required minimum six (6) foot side yard setback.
- (2) Requesting a front yard variance of eighteen (18) feet from the required thirty (30) foot front yard setback. (Tabled from the September 11, 2007 Zoning Board of Appeals Meeting).

2) **Case #18-07-ZBA:**

**Jeanenne Marhevko – Petitioner
32873 North River Road, Harrison Twp, MI 48045
13.25 Feet East of Lot 48 and Lot 49
Sunny Pointe Shores Subdivision, Harrison Twp, MI 48045
Property #0950-0037-01, Sidwell #12-15-276-028**

Purpose of Request:

Requesting the following Variances:

- (1) Requesting a side yard variance of six (6) feet from the required minimum six (6) foot side yard setback.
- (2) Requesting a front yard variance of eighteen (18) feet from the required thirty (30) foot front yard setback.

Chairman Lytle asked the Board if there would be any objections to hearing the first two (2) cases together and hearing none, proceeded to ask the applicants to step forward.

Cheryl Marhevko-Kozera was present to represent the petitioners. Cheryl went on to state that she and her sister, Jeanenne Marhevko, had a Covenant drawn up, which the Board required of them in their motion at the August 14, 2007 ZBA meeting.

Chairman Lytle asked the Board members if they had any questions for the applicant.

Member Servial had questions for the Township Attorney, Mr. Robert Huth, relative to the Covenant drawn up between the sisters.

Robert Huth, Township Attorney, responded by stating that the intent was that if either of the two sisters were to move, the pool would come down no matter what the case may be. If that was the Board's intent, then maybe you could make it part of the Board's motion to approve subject to the attorney clarifying what the Covenant is between them.

Chairman Lytle felt that this was a reasonable explanation and that it could be part of the approval this evening.

A brief discussion ensued among the Board members relative to the covenant, time period that it should be effective for, whether it is to be recorded at the Register of Deeds, and what correct wording should be used in the Covenant relating to when the pool would be removed.

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Motion by Member Servial supported by Member Senstock to approve Case #11-07-ZBA, Cheryl Marhevko-Kozera – Petitioner, 32873 North River Road, Harrison Twp, MI 48045, Lot 47 and Lot 48 Except 13.25 Feet, Sunny Pointe Shores Subdivision, Harrison Twp, MI 48045, Property #0950-0037-02, Sidwell #12-15-276-029 and Case #18-07-ZBA, Jeanenne Marhevko – Petitioner, 32873 North River Road, Harrison Twp, MI 48045, 13.25 Feet East of Lot 48 and Lot 49, Sunny Pointe Shores Subdivision, Harrison Twp, MI 48045, Property #0950-0037-01, Sidwell #12-15-276-028, subject to the following:

- 1) Approve Option 1 variance request (Requesting the pool is to be set on the property line between the houses), with the stipulation that this Covenant be modified and approved by our attorney.
- 2) The variance will be terminated, null and void, when either one of the applicants sells their respective parcel or transfers ownership.
- 3) The variances being granted are: (1) An eighteen (18) foot variance from the waterside and (2) the six (6) foot side yard variance.
- 4) The practical difficulty is the fact that it is on the water and there is a lot depth issue.

<u>Roll Call Vote:</u>	Member Servial	Yes
	Member Senstock	Yes
	Member Ulinski	Yes
	Member Zingas	Yes
	Chairman Lytle	Yes

Motion Carried.

Motion by Member Senstock supported by Member Ulinski to refund the fees to the applicants as these were identical cases and should have only been noticed one time and considered one case not two.

<u>Roll Call Vote:</u>	Member Senstock	Yes
	Member Ulinski	Yes
	Member Servial	Yes
	Member Zingas	Yes
	Chairman Lytle	Yes

Motion Carried.

- 3) Case #19-07-ZBA: Scott Whibley – Petitioner
39904 Elmite, Harrison Twp, MI 48045
Lot 156, Clinton River Park Subdivision, Harrison Twp, MI
Property #0180-0125-00, Sidwell #17-12-18-329-004

Purpose of Request: Requesting the following variances:
(1) Requesting a front yard variance of six (6) feet from the required thirty (30) foot front yard setback.
(2-A) Requesting a rear yard variance of twenty-two (22) feet, five (5) inches from the required thirty (30) foot rear yard setback.

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(2-B) Requesting a rear yard variance of nine (9) feet from the required thirty (30) foot rear yard setback.

Mr. Scott Whibley, applicant, was present to address his project. He is proposing to tear down an old (18 x 26) stick barn, which is presently used as a garage, and build a new garage, which will be just a little larger than the existing barn now, and sit back a bit farther on the property. The practical difficulty he is citing is the fact that he sits between two streets. His street address is Elmite. His “backyard” faces Clintonview.

Member Servial questioned the (10 x 10) shed attached to the garage – any particular reason you put it on the side showing on the drawings?

Mr. Whibley responded that he basically wanted to be farther away from that part of the yard. The part of the yard between the house and garage is the part that is used as a backyard because he really does not have a “backyard” so to speak. Behind the house is only ten (10) to fifteen (15) feet from the street. He is trying to keep everything away from the back patio on the north side of the house to the back of the lot.

A small discussion ensued between the applicant, Mr. Whibley, and Board members relative to placement of the garage, encroachment to garage from street, parking issues, placement of the shed attached to the garage, and the fact that the requests were noticed wrongly in the paper along with other small issues.

Member Senstock directed the applicant to ask for the maximum variances allowed for setbacks. We can always give less but not more when it comes to variances.

Chairman Lytle asked if there were any public comments on this case and hearing none asked the Board for their discussion on this case.

Mr. Whibley stated his displeasure with the whole process he has been through up to this point.

Motion by Member Servial supported by Member Ulinski to table Case #19-07-ZBA, Scott Whibley – Petitioner, 39904 Elmite, Harrison Twp, MI 48045, Lot 156, Clinton River Park Subdivision, Harrison Twp, MI, Property #0180-0125-00, Sidwell #17-12-18-329-004, date specific to the November 14, 2007 Zoning Board of Appeals meeting, to allow for re-noticing.

<u>Roll Call Vote:</u>	Member Servial	Yes
	Member Ulinski	Yes
	Member Senstock	Yes
	Member Zingas	Yes
	Chairman Lytle	Yes

Motion Carried.

- 4) **Case #20-07-ZBA:** Herman Washington – Petitioner
39345 Canterbury Drive, Harrison Twp, MI 48045
Lot 79, Riverbend Park Subdivision, Harrison Twp, MI 48045
Property #0685-0079-00, Sidwell #17-12-17-454-024

Purpose of Request: Requesting a street side yard variance of twenty (20) feet from the required thirty (30) foot street side yard setback for the installation of an inground pool.

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Herman Washington, applicant, was present to address his project of an inground swimming pool.

A brief discussion ensued among Board members and the applicant, Mr. Washington, relative to his arborvitaes on the lot line, pool placement, size of patio, and both options presented for consideration.

Another brief discussion ensued relative to the height of the arborvitaes. It was a consensus of the members that the arborvitaes could be no higher than six (6) feet tall along the street side of the property and the applicant will have to trim down the arborvitaes to that height.

Chairman Lytle asked if there were any public comments and hearing none took the discussion back to the Board for comments.

Motion by Member Senstock supported by Member Zingas to approve Case #20-07-ZBA, Herman Washington – Petitioner, 39345 Canterbury Drive, Harrison Twp, MI 48045, Lot 79, Riverbend Park Subdivision, Harrison Twp, MI 48045, Property #0685-0079-00, Sidwell #17-12-17-454-024, subject to the following:

- 1) **Grant the approval of ten (10) feet (Requested street side yard variance of twenty (20) feet) and Option 2.**
- 2) **Specify that the existing arborvitaes are to be part of the screening requirement for the pool and are to be allowed.**
- 3) **The hardship, if there be any, is the fact that it is a house with two (2) front yards, making it hard to build on and to locate a pool on.**

<u>Roll Call Vote:</u>	Member Senstock	Yes
	Member Zingas	Yes
	Member Servial	Yes
	Member Ulinski	Yes
	Chairman Lytle	Yes

Motion Carried.

5) **CASE #21-07-ZBA:** **RON JONA & ASSOCIATES – RON JONA – PETITIONER**
29000 Inkster Road, Suite 120
Southfield, MI 48034

(1) **Property in Question:** **30060 South River Road, Harrison Twp, MI 48045**
(A) Lots 164, 165 and 166, Warren Park Subdivision
Harrison Twp, MI 48045 (Zoned B-3)
Property #1290-0145-00, Sidwell #17-12-16-157-003
(B) Lot 163, Warren Park Subdivision
Harrison Twp, MI 48045 (Zoned B-1)
Property #1290-0144-00, Sidwell #17-12-16-157-019

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<u>Purpose of Request:</u>	<u>Requesting the following variances for parking and loading, building setbacks and landscape:</u> (1) A 21' parking setback variance is requested along Clearview Street. 40' is required, 19' is provided. (2) A 31.5' parking setback variance is requested along South River Road. 70' is required, 38.5' is proposed. (3) A variance permitting loading in a side yard is requested. (4) A 37.9' setback variance is requested along Clearview Street. 80' is required, 38.5' is proposed. (5) A 21.1' building setback variance along South River Rd 110' is required, 88.9' is provided. (6) A 38.9' building setback variance is requested along the westerly property line. 50' is required, 11.1' is provided. (7) A variance of 7 frontage trees is requested. 17 frontage trees are required. 10 frontage trees are provided. (8) A variance of 8 buffer trees is requested. 15 buffer trees are required, 7 buffer trees are provided. (9) A variance is required to permit landscape islands without trees to accommodate existing overhead power lines.
(2) <u>Property in Question:</u>	30048 South River Road, Harrison Twp, MI 48045 Part of Lot 283, Campau's Macomb Park Subdivision of Lot 1, 10 & Part of Lot 1 of G.H. Prentiss Subdivision, Harrison Twp, MI 48045 Property #0140-0206-00, Sidwell #17-12-16-157-027 (Zoned B-3)
<u>Purpose of Request:</u>	A 31.5' parking setback variance is requested along South River Rd. 70' is required, 38.5' is proposed. The existing building is being completely removed and the site is being used for additional required parking.

Ron Jona, applicant, was present to address his project. With Mr. Jona this evening is Mr. Greg Buss, Attorney, and Mr. Eric Levy, Manager, West Marine. Mr. Jona gave a lengthy overall view of his project specifically detailing the parking issues, alley issues, landscaping issues, right-of-way issues, and building setback issues.

Mr. Jona also stated that West Marine inherited the hardships of the existing building and existing right-of-way, as the building sits today.

A lengthy discussion ensued between Mr. Jona and members of the Board relative to the issues of the setbacks, parking, alley rights, landscaping, right-of-way issues, and issues with the building itself. The building will not be vacated during renovation.

Member Servial raised questions regarding the alleys and the sewers in those alleys, which Mr. Jona addressed.

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Mr. Jona stated that he has been working with the engineer, David Nummer, of Wade Trim, and also the Water Department of Harrison Township. So far, these issues have been addressed.

Member Ulinski had concerns regarding screening issues, specifically a wall of some sorts at the back of the property, and quoted information from the Zoning Ordinance Book.

Mr. Jona addressed these issues and stated he would be more than happy to accommodate the neighbors that are abutting the property.

Chairman Lytle asked if there were anymore questions from the Board and hearing none asked if there was anyone in the audience who would like to speak.

Leonard Lemke – 39755 Clearview Street: Mr. Lemke addressed issues relative to the West Marine project. He opposes many of the ZBA variances being requested. He is very unhappy with the semi-truck parking at the facility.

Earl Stilson – 30134 S. River Road: Mr. Stilson raised questions relative to parking issues on Clearview, loading and unloading on Clearview – unloading should be in the back of the building, setback for parking is good, power line issues – supposedly they will be moved to the back of the property line. He would like to see all these issues addressed.

Steve Lukaszewski – 30040 South River Road: Mr. Lukaszewski raised questions and had concerns regarding the deceleration lane. Where will it be?

Chairman Lytle asked if there were any further public comments and hearing none, brought the discussion back to the Board and closed the public hearing part of this case.

Member Senstock stated he is overall encouraged by what he has seen and heard here tonight. This will be a welcomed addition to the Community. It will be good to bring these kinds of businesses back here to the Community. He wanted it to be noted that the properties on Clearview Street are zoned B-1 – Business.

There was a brief discussion between Board members relative to a wall of some type at the back of the property line behind West Marine.

Member Ulinski feels that any type of screening – particularly a wall – must be of a decorative nature.

Member Zingas stated that she is looking favorably at the plan. She is not comfortable with the parking as stated in request number one (1). It is a workable plan.

Chairman Lytle is troubled by the plan. It is trying to get too much in too small a place. One or two variances would be okay, but with nine it makes it even larger issues. Mixing a residential street with business and loading and unloading issues stand out. He has concerns with all the landscaping issues and power lines. He's not sure this is a site that can handle all of these variances being requested.

Member Zingas reminded Chairman Lytle that even if these variances are granted, please don't forget that it is pertaining to Planning Commission review and approval. Perhaps the size of the building they are trying to expand into is a bit large, but then it would be a fair question as to whether the project would be moved forward if

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they are not getting that proposed building added. And, maybe that would be a fair question to the applicant to ask. If West Marine is proposing a smaller addition, that would eliminate some of the variances. But, she doesn't know if the applicant has looked into that situation as of yet. The break point is what can be added onto the building to make it feasible.

Mr. Eric Levy, District Manager, has been at this location of West Marine for at least eleven to twelve (11-12) years now. Their intent is to locate their larger store here in this area of Michigan – otherwise it would be located in Chicago or elsewhere. They plan to make this a superstore with broad categories and to make it a wholesale hub. Without this store here, as it stands now, he's not sure if the business could survive. With regards to the neighbor that has complained about the truck noise, this is the first he's heard of this and he will definitely address this situation immediately. This is a very important project to West Marine. There would be no more than two (2) trucks per week.

Another brief discussion ensued between Board members relative to loading and unloading issues and where to put the loading area.

Motion by Member Senstock supported by Member Ulinski to approve Item #2 – 31.5 parking setback request along South River Road – 70' is required, 38.5 is proposed, for both addresses of 30060 and 30048 South River Road, contingent upon the Road Commission granting the right-of-way.

<u>Roll Call Vote:</u>	Member Senstock	Yes
	Member Ulinski	Yes
	Member Servial	Yes
	Member Zingas	Yes
	Chairman Lytle	Yes

Motion Carried.

Motion by Member Senstock supported by Member Ulinski to approve Item #3 – A variance permitting loading in the side yard off of Clearview Street.

<u>Roll Call Vote:</u>	Member Senstock	Yes
	Member Ulinski	Yes
	Member Servial	No
	Member Zingas	Yes
	Chairman Lytle	No

Motion Carried.

Motion by Member Ulinski supported by Member Servial to deny Item #1 – A 21' parking setback variance requested along Clearview Street – 40' is required, 19' is provided.

<u>Roll Call Vote:</u>	Member Ulinski	Yes
	Member Servial	Yes
	Member Senstock	Yes
	Member Zingas	Yes
	Chairman Lytle	Yes

Motion Carried.

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Motion by Member Servial supported by Member Senstock to approve Item #4 – A 37.9' setback variance requested along Clearview Street – 80' is required, 38.5' is proposed.

<u>Roll Call Vote:</u>	Member Servial	Yes
	Member Senstock	Yes
	Member Ulinski	Yes
	Member Zingas	Yes
	Chairman Lytle	Yes

Motion Carried.

Motion by Member Senstock supported by Member Servial to approve Item #5 – A 21.1' building setback variance along South River Road – 110' is required, 88.9' is provided.

<u>Roll Call Vote:</u>	Member Senstock	Yes
	Member Servial	Yes
	Member Ulinski	Yes
	Member Zingas	Yes
	Chairman Lytle	Yes

Motion Carried.

Motion by Member Senstock supported by Member Servial to approve Item #6 – A 38.9' building setback variance requested along the westerly property line – 50' is required, 11.1' is provided, contingent upon proper screening and to request the Planning Commission set the requirements.

<u>Roll Call Vote:</u>	Member Senstock	Yes
	Member Servial	Yes
	Member Ulinski	Yes
	Member Zingas	No
	Chairman Lytle	Yes

Motion Carried.

Motion by Member Senstock supported by Member Ulinski to table Item #7, Item #8, and Item #9 until such time this case is reviewed by the Planning Commission. Item #7 – A variance of 7 frontage trees is requested – 17 frontage trees are required, 10 frontage trees are provided. Item #8 – A variance of 8 buffer trees is requested. 15 buffer trees are required, 7 buffer trees are provided. Item #9 – A variance is required to permit landscape islands without trees to accommodate existing overhead power lines.

<u>Roll Call Vote:</u>	Member Senstock	Yes
	Member Ulinski	Yes
	Member Servial	Yes
	Member Zingas	Yes
	Chairman Lytle	Yes

Motion Carried.

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D. OLD BUSINESS:

1) Chairman Lytle brought up Judge Viviano's opinion in the Grandview Bay Condominium case. Chairman Lytle went on to state that he felt it was a real credit to the Zoning Board of Appeals members to have such a thoughtful record that was prepared by this group, as far as addressing the issues in this case, and providing our Township counsel with adequate documentation to defend the Township.

Member Senstock inquired as to whether they have appealed this as of yet. Is their twenty-one (21) days over?

Robert Huth, Township Attorney, stated that since it was dated September 6, 2007, that no, as of this date, no appeal has been received.

Chairman Lytle also gave credit to Cynthia, Recording Secretary, as to preparing good meeting minutes. It really helped in the ongoing process.

2) Chairman Lytle also commented on the responsive brief for Brittany Park Apartments.

Member Senstock had questions relative to Brittany Park. If they changed legal counsel, have they retained another yet?

Robert Huth, Township Attorney, stated that he frankly doubts that they will. We have prepared our responsive pleadings and I have not heard anything further on the issue.

3) Member Ulinski brought up the issue of the Winowski property on South River Road. Is it going to be coming back to the ZBA?

Robert Huth, Township Attorney, stated this was correct, it will be coming back. The judge signed the consent judgment today that gives your group authority, and that an application has to be provided within the next ten (10) days to the Township to review the width issue. There is a two (2) foot width issue for the home.

Chairman Lytle, in order that everyone is aware of the issues with the Winowski case, gave a brief overview of their previous requests. There was a limited scope of jurisdiction as far as looking at it. It then went back to the Planning Commission, and the Planning Commission caught the fact that the building was twenty-two (22) feet wide and our Township ordinance states it must be a minimum of twenty-four (24) feet wide. The case needs to be reheard by us.

Chairman Lytle requested some guidance with regards to this new issue. If this Board was to deny the variance for width, would that go back to the court or would our opinion stand on this?

Robert Huth, Township Attorney, stated that Mr. Winowski still has his same rights he would have. The courts withheld jurisdiction on it and the matter. The appeal would be to Circuit Court and same judge.

Chairman Lytle still had questions relative to this matter. Why is the court substituting their judgment for the opinions of the Township as far as the decisions in these types of cases, or, interceding before the Zoning Board has had a chance to hear these cases.

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Robert Huth, Township Attorney, does not agree that it is in this matter. If the court had never been involved, the person still has the right to take this decision from you and appeal it to the Circuit Court. It is the same right he would have anyway.

Chairman Lytle stated that the ZBA never heard the case about the roof lines until it came before us the first time. So, we were pretty much limited as to what we could look at based upon the judge's opinion.

Robert Huth, Township Attorney, stated that this was a very good point. This case has not been a typical case because it has been a finger pointing from the Plaintiff, Mr. Winowski, and the Township in terms as to whether or not he was given approval at day one. The Township's position is that he was not. His position is that he was. He had a signed application allowing him to do the construction. If his facts were right, and Mr. Huth believes that they were not, he would not have had to come back to you folks anyway. So, what happened, is the judge – in trying to unravel the facts the best he can – put it in a position where Mr. Winowski had to go to the Planning Commission and the Zoning Board of Appeals, actually two (2) times, with a site plan that would have to be approved by the Building Department, and have it attached to the Consent Judgment.

A brief discussion ensued relative to issues concerning the Consent Judgment and the other lot, next door to this lot, and how they would be handled.

4) Member Ulinski read to the Board members a letter received today, October 10, 2007, from Rosemary Davis, Township Attorney, relative to an address on North River Road. It entails the arborvitae issue next to the marina. Apparently, this is a tentative agreement where the arborvitae, in between the residence and the marina, are all going to come down and they are going to put a six (6) foot privacy fence up in its place.

Robert Huth, Township Attorney, advised Rosemary to draft up a letter to send to the neighbors advising them that they would have to make application to the ZBA for the garage variance. They would still need a Consent Judgment, which we would take to the Township Board, and let them do the authorizing. There may not even be any more issues. He would be happy to pass this along to Rosemary.

E. ANNOUNCEMENTS: None

F. NEW BUSINESS:

Chairman Lytle stated he would like to receive and file the following that were submitted to the Board this evening:

1) Letter from Cannon Freight Systems, dated September 21, 2007.

2) The Board would like to be notified as to whose terms are about to expire. Member Senstock requested Cynthia, Recording Secretary, to check this and notify the Board as soon as possible, as the members will have to re-submit an application for re-election. (Based upon subsequent follow up from Cynthia, the Recording Secretary, Ms. Zingas term will expire on December 20, 2007 and Mr. Senstock's term will expire on December 20, 2007)

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- G. **PUBLIC COMMENT:** None
- H. **NEXT MEETING:** Wednesday, November 14, 2007 at 7:00 PM
- I. **ADJOURNMENT:**

Motion by Member Ulinski support by Member Servial to adjourn the meeting at 9:45 PM.

Ayes: 5 Nays: 0

The motion carried unanimously.

Maria Zingas, Secretary
Harrison Township Zoning Board of Appeals

Cynthia Chambos, Recording Secretary

Date Approved: _____