ACME TOWNSHIP
Zoning Board of Appeals
March 16, 2005

Wednesday, 7:30 p.m.
Acme Township Hall
Acme, Michigan

Meeting called to Order at 7:35 p.m.

Members present: J. Kuncaitis (Chair), P. Collins, D. Kipley, D. Smith
Members excused: L. Belcher, D. Krause
Staff present: S. Corpe, Office & Planning Coordinator/Recording Secretary
J. Hull, Zoning Administrator
C. Bzdok, Township Counsel

1. **Review and approval of the agenda, inquiry as to conflicts of interest:** Agenda approved. Kipley expressed a potential conflict of interest regarding item 4C, as he has previously represented Doug Murdick and the proposed project may impact him.

2. **Correspondence:** None

3. **Reports:** None

4. **Hearings:**
   a) **Interpretation request from Zoning Administrator requesting clarification of the controlling process for §6.8 Planned Shopping Centers.** (Attachment A included and incorporated by reference): Kuncaitis stated that this matter would be discussed first by the ZBA, and then the floor will be opened to public comment. He asked that to the extent possible mention of specific business entities be omitted, as the matter at hand is a general ordinance interpretation and is not specific to any one entity. All comments should be directed to the Chair rather than between individuals.

   Hull stated that on January 28 representatives of Meijer submitted an application for development review on their property located at the southeast corner of M-72 and Lautner Road. Those individuals indicated their belief that the application would be subject to site plan review by the township, but not to special use permit review. Hull consulted the Ordinance, and also asked Meijer, Inc. to present a white paper detailing their position which is part of the record. It appears to him that the interpretation centers on the meaning of the language in Section 6.8.2, and as he was not persuaded by the comments he received, Hull is seeking a ruling from the ZBA.

   Kuncaitis invited public comment.

   Mr. Timothy Stoepker, attorney for Meijer, Inc. and Mr. Scott Nowakowski were present. Mr. Stoepker agreed that an application had been submitted on January 28 with a request for review pursuant to Section 8.12 of Article VIII of the Zoning Ordinance as required in Section 6.8.2. He stated his position that

the requested land uses are permitted by right in the B-3 district. He read the text of Section 6.8.3, omitting the title of the section and emphasizing the word “shall” and the omission of any mention, other than in the title or in sub-item (1), of an SUP review requirement. Mr. Stopeker also read from the statement of intent for the B-3 district, asserting that the language indicates that uses in this district are and should be treated differently than uses in other business districts. He stated that references to Section 8.1 regarding SUPs present in the ordinances for other business districts are intentionally omitted from Section 6.8.

Mr. Stopeker also read from the requirements of Section 8.12, stating again that he observed no mention of the general SUP provisions of Section 8.1 and listing the specialized requirements imposed on review of a planned shopping center. He stated that the fact that a market analysis and traffic survey are required of planned shopping centers but not generally of all SUP applications is further evidence that this type of application is unique and not subject to the other SUP requirements. Mr. Stoepker read references from each of the business zoning districts and the agricultural district referring to Section 8.1 or special land uses specifically as compared to the lack of such a mention in the ordinance for the B-3 district.

Mr. Stopeker stated that he was today handed a memo, otherwise unmarked, stating that if amendments were made to the B-2 district requiring that all uses were special uses, the same change should be made to B-3 as well. He asserts that the minutes from the adoption of Ordinance Amendment #52 do not indicate that the second change was actually made.

Turning to Hull’s March 16 staff report, Mr. Stopeker took exception to the statement that there has been a history of approving planned shopping centers in a B-3 district pursuant to an SUP application. He stated that no planned shopping center has been approved in the B-3 district before, and that Meijer’s previous application was processed as an SUP only because Meijer was told it must be done this way and nobody ever double-checked the assertion by the township. He also disagreed with the characterization that Meijer is asking for “free rein” to do as they wish without appropriate oversight, noting that significant submittals are required with detailed review by the Planning Commission and Board. He asserted the applicant must undergo review pursuant to Section 8.12, and Section 6.8.3 states that they shall be approved if they meet those standards. He disagreed with Hull’s assessment that the use must be reviewed as a special land use and that the site plan only is subjected to the enhanced requirements of Section 8.12. In part he based his argument on the idea that a market analysis is not relevant to a site plan but to a use.

Mr. Stopeker stated that Gerry Harsch’s letter references planned shopping centers in relation to PUDs, but that this should be viewed as irrelevant because the ordinance does not currently contain PUD provisions. He also stated that if a circumstance arises where opposing interpretations are both reasonable, the law requires that the ordinance be construed in the way most favorable to the applicant. He stated that the applicant is seeking to follow the

rules as intended by the drafters of the ordinance as it exists, and to have those rules clarified accordingly.

Kuncaitis asked about the original application submitted by Meijer, and under which section of the ordinance it was submitted. Mr. Stoepker stated that it was submitted as an SUP application under Section 6.8, but that the review process was never completed. While the applicant was preparing for the current approval process, careful review by their planning and engineering consultants indicated that only site plan review was actually required.

Kuncaitis asked why a challenge wasn't made during the previous process based on the same information being presented now. Mr. Nowakowski stated that when Meijer enters a community they seek to be a "good neighbor" and to work closely with the local government and citizens. They met with the township and were told they must pursue an SUP process, but were confused. They decided at that time that their options were to go along with the community's process, or fight in court (which they try to avoid) or abandon their plans. Mr. Nowakowski made a decision to pursue the process as presented, and "got his legs knocked out from under him…it was a disaster." Mr. Stoepker offered the analogy of a car traveling down a road at 45 mph when the speed limit is 35. The speed the car is traveling doesn't change the actual speed limit. He asserted that the requirements of site plan review pursuant to Section 8.12 is more stringent than the general SUP requirements. He asserted that the township attorney's letter gave credence to the applicant's argument.

Mr. Lewis Griffith, 5181 Lautner Road, stated that he was present at the time when Gerry Harsch was the township planner, and that he was always a straight shooter who dealt with specifics. Mr. Griffith feels that the case should be clear and that the interpretation of the ordinance offered by Meijer should be upheld.

Mr. Dan Hanna, 7239 Lautner Road, asked for clarification of a statement by Mr. Stopeker that Hull wrote in his staff memo that Meijer's was seeking a "free ride." Mr. Hanna expressed disappointment that the township would accuse an individual with whom they were doing business of being untrustworthy.

Kuncaitis asked Bzdok to comment. Bzdok stated a belief that there are two reasonable interpretations of the ordinance; 1) that SUP approval is required and that 2) site plan approval is required pursuant to Section 8.12 and the site plan review standards of Section 8.1. There are some areas where he disagrees with Mr. Stoepker's assertions.

Bzdok agrees that one begins with Section 6.8, particularly Section 6.8.2 entitled "Uses Permitted by Special Use Permit." He agrees that a title cannot be the basis for an interpretation if it is contrary to the text of the following language, but believes it deserves weight. He also agrees that one further moves as directed by Section 6.8.3 to the standards of Section 8.12. At this point, his disagreement with Mr. Stoepker begins. He notes language in the latter section stating that one applying for site plan approval for a planned

shopping center states that "such request shall *also* be accompanied by the following evidence." Section 8.12 itself contains area and bulk requirements but not a complete set of review standards. If you are submitting a site plan review request and must also follow these standards, what are the basic standards for the site plan review other than the additional information required by Section 8.12. He believes that the basic site plan review request is subject to another section of the ordinance, Section 8.1.2, Uses Authorized by Special Use Permit; Permit Procedures. Farther on there are review standards for how to evaluate the material that is required to be submitted. It is his opinion that Section 8.12 requires submission for site plan approval plus additional evidence. What governs site plan approval?

One answer is that you use only the site plan review-specific portions of the SUP article of the ordinance. He interprets that Meijer has followed this path by providing application materials including impact assessments and review letters from public agencies as required. The application appears to contain elements relevant to Section 8.12 and the site plan review sections of Section 8.1. So to him, the question is not whether the review should be subject to 8.12 only, but that the question is whether the review is subject to 8.12 and only portion of 8.1, or 8.12 and all of 8.1. Mr. Stopeker has skillfully argued for the former, but Hull has argued skillfully for the latter. He believes that one should not ignore that 8.12 and 8.1 are both part of Article VIII, titled "Uses Authorized by Special Use Permit" which states that applications subject to the article are subject to SUP approval.

Bzdok believes that considering legislative intent is important, and that Hull's research into the history of this issue is important and his reasoning has been largely sound.

Kipley stated he has struggled with the definition of "clear text." He cannot find any reference to Section 8.1, believing that it is only a guess that Section 8.1 is relevant to Section 6.8. Bzdok reiterated his point of view as set forth above. If anything is unclear and needs to be interpreted, it is the question of whether only parts or all of Section 8.1 are relevant.

Kuncaitis asked what the procedural difference between the two points of view might be. Hull responded that Jim Maitland, supervisor from 1975-1991 and a former Planning Commission member provided a letter at Hull's request. This letter states that in drafting the ordinance, he recalls that the terms SUP and site plan review were used interchangeably, with the same meaning. He further stated that it was the intention in 1981 that all uses in all business districts be subject to SUP review and approval, and that the SUP process was not to be used to deny a land use if all requirements of the SUP standards were met. Gerry Harsch, the Planner at that time also submitted a letter confirming an intent that all uses in the B-3 district be special uses. Late yesterday Hull found the document Mr. Stopeker referred to earlier that talks about making B-3 uses subject to SUP along with B-2. When he found this document he took it to Garfield Township to show it to Mr. Harsch and get his input. At first Hull felt the document might uphold Meijer's point of view, but Mr. Harsch examined it and stated that it clearly did not, but upheld Hull's point of view instead. At one time B-3 uses were uses under Special

Conditions. Now, the only such uses subject to site plan review by the ZBA are in the B-1P district.

It was difficult for Hull to say what practical, procedural difference might occur, because there are not separate processes laid out for site plan review. He perceives that the only possible difference might be a lack of public hearing and public input opportunity under site plan review alone. Bzdok feels there are two procedural choices: do everything required in Section 8.1 or only those things specifically related to site plan approval. Whatever decision the ZBA makes this evening, a clear indication to the Planning Commission as to the appropriate procedure would be a good idea, perhaps with a resolution to follow at the following meeting.

Mr. Nowakowski asked for an opportunity to respond. Mr. Stoepker asserted that there are specific site plan review criteria in the ordinance: are bulk and area requirements in Section 8.12 met? Section 6.8.6 also refers one to supplemental regulations that should be consulted in relation to the site plan. Kuncaitis stated that to him the only difference appears to be whether or not a public hearing will be held. Mr. Stoepker stated that the difference is the amount of discretion the Planning Commission and Board have in the review and approval process, and that there is a long list of specific criteria against which a site plan application will be reviewed. He stated that there is historical evidence that B-3 uses did not used to be special uses, and that they still are not today. He asserted that there is “no guesswork” and no public hearing required, and that Section 8.1 is not relevant to any degree, only Section 8.12 which is the standard to which they submitted.

Kuncaitis asked if the Planning Commission is still bound by the list of ordinance requirements Mr. Stopeker detailed, and Section 8.12. Hull said he believed this would be the case.

Ron Reinhold, 4446 Westridge, feels that the ordinance is very clear after listening to Mr. Stoepker. In 1988 a referendum established the B-3 zoning on the Meijer property. He cited a letter to the editor of the newspaper contained in the township’s files from Smith recommending the B-3 rezoning for the property. Meijer’s bought the property 15 years ago. If there was such a big issue with the ordinance, why hasn’t it been identified and corrected long ago? Why only now, when the property owner has expressed interest in developing, is there interest in changing the ordinance. To him it would seem dangerous and illegal to do so at this time. The township should not try to make the applicant follow requirements the ordinance does not set forth.

Mr. Griffith stated that it seems to him from listening that Mr. Stoepker has read from the ordinance verbatim and made firm statements of what is and is not true. However, Hull and Bzdok seem to use language that allows room for doubt and makes it appear they are uncertain and trying to insert things that aren’t in there in black and white.

Hull indicated that his position is in written form and he is comfortable with the points he made. If a member of the public would like to rebut and debate his report in detail, he would entertain such an exercise at a later time. Referring

to Section 6.8.3, Mr. Stoepker has emphasized the word “shall.” Yet referring to the word “may” in Section 6.8.2 Mr. Stoepker has insisted that the words “may” and “shall” could be interchanged without effect. This is inconsistent and seems to him to be an attempt at “verbal bullying.” Further, Mr. Stoepker has asserted that the intent of the drafters of the ordinance is clear within the ordinance language and that the comments provided by Mr. Harsch and Mr. Maitland should be disregarded where they oppose his interpretation of the ordinance. Yet, Messrs. Harsch and Maitland were the drafters, and they say that the intent was that B-3 uses be by Special Use Permit in their letters. How can Mr. Stoepker disregard the current, first-hand testimony of the drafters?

Hull stated that Mr. Stoepker has stressed the B-3 approval process as being unique, but has neglected to mention that it may also have elements in common with other processes. He feels Mr. Stoepker has not demonstrated thoroughly the impossibility that the only thing that makes the B-3 process unique from the standard SUP process is the additional imposition of Section 8.12. Hull has found Mr. Stoepker’s arguments to be a use of ineffective logic to create an intentional confusion.

As to any implication by Mr. Stoepker that Hull is attempting to twist the ordinance language, Hull stated that he would favor the introduction of a Meijer into the community. However, he is obligated to uphold the wording of the ordinance.

Kuncaitis asked Mr. Stoepker what the applicant would have done had Hull declined to accept their application due to inappropriateness or lack of completeness for an SUP application. Mr. Stoepker responded that the applicant would have sought an appeal of this determination. He stated that originally Hull stated that he would not take on the matter of the interpretation because it was too politically sensitive, but for some reason changed his mind. Mr. Stoepker continued to characterize the statements from Messrs. Harsch and Maitland as “old history,” yet also upheld Mr. Harsch’s 1981 memo as an example that is point of view is correct.

Noelle Knopf, 5795 US 31 North, stated that since she used to serve on the ZBA, she is concerned about the course of events over the past month. She believes Hull’s point of view has evolved from one of support of the applicant to a “full frontal attack.” She quoted the minutes of the February 28 Planning Commission and a statement by Hull that he was “damned either way.” Old letters should not be relevant; the ordinance should be upheld as written.

Mr. Hanna reiterated Mr. Stoepker’s statement that if two interpretations are reasonable the one most favorable to the landowner must be upheld, and if the township’s attorney has said that both interpretations are reasonable, the ZBA should be careful to follow the law.

Bzdok stated that the ZBA should carefully consider Hull’s statement that Section 8.12 is supplemental to all of Article VIII. Section 8.2 through Section 8.27 is are self-contained sections of Article VIII relative to specific types of uses, including Section 8.12. He feels there is no question that there was an

intent that Section 8.12 is one of 26 kinds of special uses reviewed and evaluated under Article VIII – this is the structure of the ordinance and this is how the intent and purpose of the article reads. There is no question that Section 8.12 states it is supplemental to a request for site plan approval. The only question is whether the site plan approval is subject to some or all of the general requirements of Article VIII. Either interpretation is reasonable, but this does not mean that the landowner automatically wins.

Kuncaitis read into the record a letter written by Krause, included and incorporated by reference, supporting the argument Meijer's is making. Bzdok stated that it should be clear that because Krause is not present, his opinion cannot count as a vote. Kuncaitis stated that the letter should be regarded as part of the public comment record and not as input as a member of the ZBA.

Hull stated that some time ago CCAT submitted a request for interpretation to the ZBA. When Hull evaluated it, he "tried to be brutal." Hull stated that anyone can attest that he does not "pull his punches" when he writes a staff report, and there should be no implication that he seeks to favor one individual point of view in the community over the other.

Kuncaitis feels that the situation has been made too broad. He believes that the real question is the interpretation of Section 6.8.2. He read the title of this section, noting that the title is not the deciding factor but that titles must have some meaning or they would be superfluous. He noted the use of the word "may" in this section in relation to issuing a building permit. Section 6.8.2 refers to the uses in Section 6.8.3, where the language "shall be permitted." Occurs. The second section is dependent on the first.

Kipley believes that Sections 6.8.2 and 6.8.3 are completely independent of one another. Kuncaitis disagreed strongly, noting that 6.8.2 refers to uses listed in 6.8.3. Kipley feels that the statement of uses that shall be permitted in 6.8.3 stands alone.

Smith believes that further study is required before the matter may be ruled upon. The ordinance was adopted when Acme was a much smaller community. Tom's was the biggest thing in the township, and it made the community mindful that it was necessary to keep up with the times to ensure that the character of the community would be maintained. Meijer's generally does a good job with their development, and Fred Meijer seems to be concerned with fitting in well with a community. When Meijer purchased the property there wasn't a timeframe for development. Times have changed and much growth has occurred over just the last few years. Smith feels he needs to know more about what Meijer's must comply with. Kuncaitis reminded Smith that this hearing is about the meaning of the ordinance and not about one particular application. He also noted that much of the ordinance seems to have been written in the 1980's specifically in relation to Dr. Johnson's property.

Collins wondered if it would be possible to find and review copies of the ordinance prior to the amendments to 6.8 and 8.12. He believes the intent existed that B-3 uses be by special use, but isn't quite certain. Hull stated that

he has provided everything that he has been able to find in the way of documentary history to date. He would be glad to make an additional effort to locate materials if desired.

Kipley stated that a landowner is seeking direction as to how to submit paperwork to develop his property. Is the process a site plan review or SUP process? To him this is a very simple question. Further review or evidence does not seem productive to him. Hull's review of the history has been thorough, and he does not recall that there was another application under this ordinance other than the prior application. The vote should be on which process is required, regardless of what the nature of each process is. Kipley and Kuncaitis felt that making a decision tonight is appropriate; Collins felt he would like more information; Smith stated that he might be prepared to make a decision if each process could be clarified.

Kipley asked which process is more restrictive, site plan or SUP. Bzdok stated that two potential options were presented to the ZBA. The SUP process is more restrictive, contains more discretionary standards and requires a public hearing, and is judged by standards set forth in Section 8.3 plus the standards in 8.12. A second option is that a site plan approval process is held. The requirements for this process would be supplemented by the requirements in Section 8.12. The applicant would provide all information that is strictly site plan related in Section 8.3 and meet the standards of 8.12. It appears to him that the application submitted attempts to meet the requirements of Section 8.12 plus all of the SUP standards. Kipley observed that an applicant may provide information above and beyond basic requirements. Mr. Stoepker has asserted a third option, that only the standards of Section 8.12 are relevant.

Mr. Stoepker stated that the B-3 specific portions of the ordinance were amended in 1981, but the other sections of the ordinance discussed tonight were amended or added at later dates. He therefore asserted that those other sections could not apply. Mr. Bzdok stated that some sort of standards applied at all times. Corpe stated that by this same reasoning, the landscaping ordinance amendments and additions of only two years ago would not apply to anything coming before they were made, which would be silly.

Motion by Smith, support by Collins that Section 6.8.2 be interpreted to require Special Use Permit approval for land uses in the B-3 district, subject to finalization by resolution at the next ZBA meeting. Motion carried by a vote of 3 in favor (Smith, Collins, Kuncaitis) and 1 opposed (Kipley).

b) Hearing for Lochenheath variance request of §7.4.1(2)c to allow four back-lit subdivision/development advertising signs (Attachment B included and incorporated by reference): Kuncaitis read the hearing notice into the record. Russ Clark, R. Clark Associates presented on behalf of LochenHeath. Hull noted that the request for the backlit signs was not part of the original legal publication; however, Acme Township has made a habit of exceeding the public notice requirements for ZBA hearings and he has

ascertained that this is not a problem. The ordinance requires that subdivision signage be no larger than 16 sq. ft. and unlit. Mr. Clark compared LochenHeath at about 600 acres and 500 units with multiple neighborhood areas to the GT Resort at about 900 acres and between 1,400-2,000 units. He displayed the signage permitted for the Resort, including individual signs permitted within the development for individual neighborhoods and areas and on the perimeter of the Resort for neighborhoods and amenities. Mr. Clark also noted that the amount of road frontage on US 31 that assists in identifying the Resort is significantly larger than the amount of US 31 frontage for LochenHeath. The Resort has several access points; LochenHeath will have one access as a gated community, with an additional service access. The gatehouse will be 500' west of the highway and largely invisible from the road. Some method of clear identification that will help people locate and safely enter LochenHeath above and beyond the permitted 16 sq. ft. is therefore desired by the applicant.

Mr. Clark displayed the expected metal and stonework fencing along US 31. They would like to incorporate two signs flanking the boulevard entrance to the community and angled to make them effectively visible to motorists living in or visiting the property. There would be two additional signs located at the north and south ends of the development to indicate that one is approaching the entranceway.

Each proposed sign is 16 sq. ft. and would be made of stonework and integrated into the fence structure. The signs would be either backlit through the lettering or downlit from a shielded overhang cap to the sign meeting down-direction requirements for lighting. Each sign would be less than 6' in height.

Hull's report indicated that Basic Condition D (that specific conditions are general or recurrent in nature) had not in his opinion been met in terms of the requirements for granting a variance. Mr. Clark stated that he does believe that the situation does provide a unique need to make the entrance to the large project site which is largely set back from the road easily and safely located on a high-speed road. He also noted that early in his career he worked for the Resort and was instrumental in receiving their sign variances.

Kuncaitis noted that Hull's staff reviews are thorough and impartial. There have been size adjustments granted by the ZBA in the past for signs in various special situations that would alleviate some of the concerns expressed in his report (none of the special conditions were deemed to have been met. A public golf course would be allowed to have one or two larger signs; LochenHeath has a private golf course.

Public Hearing opened and closed at 10:11 p.m., there being no public comment.

Motion by Smith, support by Kipley to approve Application #2005-2Z to permit 4 16 sq. ft. downlit or backlit signs for LochenHeath, all Basic Conditions and Special Condition B having been met due to the extraordinary physical condition of the 600-acre, 500 house plus golf

course development having relatively little frontage or visibility from the major highway providing access. Motion carried unanimously.

c) Review of staff determination, requested by Robert Ewing & Bill Peyton, establishing authority for the Township to require existing building with a change in use, at the former Traverse Bay Woolen Company, to meet the full parking requirements of §7.5 (Attachment C included and incorporated by reference): Kuncaitis read the public hearing notice into the record. Messrs. Peyton and Ewing were present in support of the application, and noted that the Murdick Fudge property is a separate parcel, so Kipley should have no conflict of interest. Kuncaitis noted that in May 2004 the applicants received approval from the ZBA to change the use of the grandfathered, nonconforming Traverse Bay Woolen structure which sits too close to US 31 North.

Mr. Peyton noted that during the prior ZBA process, it was noted that only interior improvements to the building were contemplated. He had assumed it was understood that not only would there be no exterior improvements to the structure itself, but no changes to the parking lot were contemplated either. He also stated that the only reference to parking site development is in Section 7.5.1, and requires compliance at the time of erection or enlargement of a building. Because of this and the presence of an existing parking lot with sufficient spaces to meet their needs, they assumed that no changes to the parking lot would be required. Subsequently they were informed by Corpe that she believed that parking lot improvements to bring the lot up to current development standards would be required, and this interpretation was detailed later as a joint determination by Bzdok, Hull and Corpe in a memo. Mr. Peyton believes that too much weight was given in that memo to an ordinance statement that they believe has come down to a position that all of the ordinance requirements must be met, plus any other requirements the township may deem reasonable. It is their position that they do wish to make the property attractive to potential clients, but that since they have not proposed an addition to the existing building or erection of a new building, they should not be required to install parking lot landscaping islands or irrigation. Even if the requirement is upheld, they feel it should be waived for the parking spaces immediately adjacent to the east side of the building, as this area will be largely invisible to the general public.

Kuncaitis asked if there are lightpoles on the property. Mr. Peyton stated that there are not, but there are lights surrounding the building that shine onto it. Collins observed that there is also a floodlight mounted on the building. Corpe noted that she feels this should also be discussed; any exterior lighting not down-directed is prohibited. Mr. Peyton also noted that if the store is reused as a store – the same use – no changes would be required, and this does not seem fair to them. Kuncaitis stated that in addition to the points in Hull's staff report, there is a tradition of bringing non-conforming situations closer to current standards at the time of a change in use.

Mr. Peyton stated that being required to bring the site completely up to standards for parking lot landscaping and development might be prohibitively expensive for them and might scuttle the project.

Kipley asked if the same change in use in a conforming structure would have triggered the same requirement. Corpe and Hull replied that the change from the use permitted by the SUP to a different use is the trigger, and that the fact that the structure is non-conforming is irrelevant.

At issue is whether or not the township has the ability to require that site improvements be brought up to standards when a land use is changed without a change to the exterior of the primary structure. The answer will set a significant precedent. Hull published the matter as an appeal from a determination in the hopes that the ZBA might have some leeway to discuss special conditions related to just this applicant and their particular circumstances. Kipley believes that when a building permit is issued, all conditions have to be brought up to code. He recalls that this was the case at the TC Country Club when it was remodeled, although they didn't add to the structure. They were required by the City's ordinance to improve the parking lot as well as electrical and other items. Kipley believes that therefore any situation requiring a permit might require that all site development conditions be met.

Hull noted that the parking lot development section of the ordinance mentions erection or enlargement of a structure as a trigger, but the landscaping section mentions any special use permit or site plan review as a trigger. The section related to off-site parking development requirements does not identify a triggering event.

Public Hearing opened and closed at 11:05 p.m., there being no public comment.

Motion by Kipley, support by Collins to uphold the staff determination that a change in use/amendment to Special Use Permit allows the township to require that current site development standards be met. The ZBA also determines that Section 7.5.4, Off-Street Parking Site Development Requirements governs the standards for installation of interior landscape areas within parking lots but does not set forth a timeframe within which those specific improvements must be made. Motion carried unanimously.

The question of the required timeframe for installing improvements interior to a parking lot pursuant to Section 7.5.4 having been settled, the applicants mentioned that MDOT is requiring that two of the four curb cuts on the property be closed but is recommending that this not be done until the fall after the peak traffic season. Therefore they would like a variance of Section 7.5.6(10) requiring that perimeter improvements be installed within one month of occupancy. The ZBA is willing to find that the Basic Conditions and Special Condition B would be met because it would be unreasonable to require installation of the landscaping and curb cut improvements at different times. Although this variance request was not published as a hearing subject, the ZBA would like to approve it conditioned on review of the decision by Bzdok.

Motion by Kipley, support by Collins granting a variance from the conditions of Section 7.5.6(10) that require installation of perimeter landscaping within one month of occupancy, to permit installation of perimeter landscaping concurrent with closure of two curb cuts on the property as required by MDOT, but to occur no later than the end of the 2005 planting season. This approval granted conditional to approval of the action by township counsel. Motion carried unanimously.

5. **Other Business:** None

6. **Approval of minutes from the February 10, 2005 regular meeting** (Attachment D included and incorporated by reference):

   Motion by Collins, support by Kipley to approve the minutes as presented. Motion carried unanimously.

Meeting adjourned at 11:39 p.m.