

**CANNON TOWNSHIP ZONING BOARD OF APPEALS
REGULAR MEETING HELD ON TUESDAY, January 15, 2013 AT 6:00 PM**

INVOCATION: Levan

PLEDGE OF ALLEGIANCE: Chairman Warmbier

MEMBERS PRESENT: Eslinger, Warmbier, Levan, McBrien, Elkins

MEMBERS ABSENT: Van Keulen

APPROVAL OF MINUTES: October 16, 2012 MOTION: Warmbier. **SUPPORT:** Eslinger.
Voice vote: Yes – , 5 No – 0. Motion carried.

NEW BUSINESS:

I. **Appoint new chair. MOTION to appoint Van Keulen chair:** Warmbier. **SUPPORT:**
Levan.

Voice vote: yes – 5. No – 0. Motion carried.

II. **ZBA 12-6 Bruce and Kim Ayers**

PP 41-11-21-400-061
5574 Myers Lake Ave
Belmont MI 49306

The applicant appeals a decision under Zoning Ordinance section 23.05B (Restoration and Repair) and requests consideration of section 23.05C. A variance is requested to rebuild a nonconforming accessory structure damaged by fire.

Reviewed five criteria required to meet for granting a variance:

- a) **Exceptional/Extraordinary Circumstance:** Slope of site renders most of the parcel “unbuildable”. Also, this is a corner lot (setbacks).
- b) **Unique Situation:** The neighbors do not have this slope and they are not on a corner.
- c) **Not self created:** Garage/accessory building existed when home was purchased in 1993. Fire on October 21, 2012 destroyed this garage.
- d) **Substantial Justice:** Neighbors have accessory structures in addition to their barns.
- e) **Minimum Variance Necessary:** Only request to replace what was lost in existing footprint.

PUBLIC HEARING: Dave Heyboer 5075 Egypt Valley – Mr. Heyboer states that he cannot see why we are there. He recommends approval for the garage.

BOARD COMMENTS: Eslinger appreciated the fact that they considered other options such as adding onto the existing pole barn. Warmbier believes it is an exception because it was nonconforming prior to fire. It is unique because it was damaged by fire and not self created. Substantial justice is that they would not have the same rights to use their property as their neighbors. They are asking for minimum variance – build in same footprint. Elkins agreed and asked to put it to a vote.

MOTION to accept request to rebuild accessory building in existing foundation. Five criteria have been met. We have found that a) There is exceptional/extraordinary conditions, specifically the nonconforming structure prior to fire b) This is a unique situation caused by fire c) Not self created d) Without granting variance there would be lack of substantial justice e) Applicant requesting minimum variance necessary (replace exactly what they had): Levan. SUPPORT: Elkins. Roll call vote: Eslinger – yes, Levan – yes, McBrien – yes, Warmbier – yes, Elkins – yes. Motion carried 5-0.

III. ZBA 12-5 Scott Florida

PP 41-11-05-200-032
6366 Kies St NE
Rockford MI 49341

The applicant appeals a decision under Zoning Ordinance section 19.05A11 (Private Roads) and asks the Board to grant a dimensional variance to construct a driveway between a pond and the side lot line (within 25' from a body of water).

Reviewed five criteria required to meet for granting a variance:

- a) **Exceptional/Extraordinary Circumstance:** The land was originally divided with the approval of the Township. The paperwork on file with the Township shows where the driveway was intended to go at the time of the land division, which is on the east side of the pond. This side of the property is too narrow to allow the new standards for setbacks from wetlands to be followed and still provide space for a driveway.
- b) **Unique Situation:** Since the purchase of the land the ordinance has changed and, therefore, the driveway permit has been denied. The denial of the driveway permit renders the land useless for the purpose for which it was purchased.
- c) **Not self created:** Applicant did not change the ordinance.
- d) **Substantial Justice:** When the property was purchased the applicant came to the Township and confirmed with officials that he could put a driveway on this property around the east side of the pond. He was shown the document that was on file from the land division and was assured that, since the Township had that on file, the Township was expecting that the driveway would be put in that location. It seems somewhat like a “bait and switch” to purchase the land under one ordinance (and word of approval from the Township) and then to receive a denial from the Township for the driveway. The essential fact upon which the purchase of this property was made should be honored or justice will most assuredly be compromised.
- e) **Minimum Variance Necessary:** Applicant wants only to install driveway.

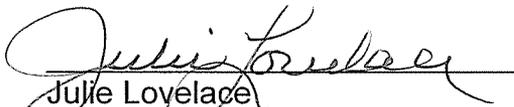
PUBLIC HEARING: None.

BOARD COMMENTS: Warmbier states ordinance has changed and this is obviously not self created. Why else would he buy the property? Fire Chief Jim Morris reviewed application and finds driveway acceptable as long as driveway is installed according to Township standards. McBrien stated this ordinance is to protect Bear Creek and does not extend to this circumstance. He supports allowing the driveway.

MOTION to grant variance. Five criteria have been met. We have found that a) There are exceptional/extraordinary circumstances. The east side is the only place he could put a driveway b) This is a unique situation in that this is the only place the driveway could go. He checked with the Township at the time of purchase c) This is not self created. He did not dig the pond or change the ordinance that was in place at the time d) There is substantial justice. He is going to put in a driveway that will still meet the construction requirements of the Township e) Applicant requesting minimum variance necessary: Eslinger. SUPPORT: McBrien. Roll call vote: Eslinger – yes, Levan – yes, McBrien – yes, Warmbier – yes, Elkins – yes. Motion carried 5-0.

ADJOURNMENT: 6:33 p.m.

NEXT MEETING: TBA.


Julie Lovelace
Zoning Administrator



Michael Warmbier
Zoning Board of Appeals, Chairman