

**Cannon Township Zoning Board of Appeals
Regular Meeting Held Tuesday, November 19, 2013 at 6:00 PM**

Business Agenda Items:

ZBA 13-8 Mike & Marilyn Best

Members Present: Eslinger, Levan, McBrien, Van Keulen, and Warmbier

Members Absent: None

Staff Present: Zoning Administrator Lovelace and Planner Paul LeBlanc

The invocation was offered by Commissioner Eslinger.

**Move to approve minutes as written with addition of “Warmbier stated RVs, trailers, etc should not be able to park in the street either” to pg 2 last paragraph: Motion: Warmbier. Support: Levan
Voice vote: Yes – 5, No – 0. Motion carried.**

Public Comments: None.

New Business:

**ZBA 13-8 Mike & Marilyn Best
7141 Cuesta Way Dr NE
Rockford MI 49341
PP#: 41-11-08-327-011**

The applicant appeals a decision under Zoning Ordinance Section 6.04.D.2 (side yard setback) and asks the Board to grant a dimensional variance to allow an addition to the garage.

Public Hearing (time open 6:09 p.m. and closed 6:25 p.m.): Van Keulen explained that in order to receive a variance all five criteria must be met, regardless of the Board’s personal feelings. Mike Best 7141 Cuesta Way explained the purpose for the extra space for their son with special needs. That would encompass the special circumstance. They have a two-car garage, but with the two cars they cannot fit a wheel chair through. They also need to build a ramp for their son to get in and out of the car.

1. Extraordinary conditions of the site: The home favors the NE side. The only area for the addition that makes sense for the addition is that side. The other part of the yard is also wet/clay.
2. Not self-created: They bought the site as is.
3. Substantial justice: It will not have any adverse effects to other properties. There will still be at least 20 feet between the addition and the neighboring house.
4. Minimum variance: This is the minimum needed to meet building code requirements.

They are proposing pushing the addition north to accommodate the rear side setback. This is different than their original proposal. They are requesting 3’6” variance on the front corner and nothing on the rear. Warmbier asked how he would respond to LBVIA’s assertion that there is sufficient room to add on the back. Mr. Best said it would not be accessible from the outside (unless he removed the trees) and also would not allow him to utilize the garage space to get him in and out of the car, which is probably the most important part. He could put a therapy room on the back of the house, but that would not accommodate the garage access.

Board Comments: Warmbier asked Planner LeBlanc if there was anything in the American Disabilities Act that superseded the Zoning Ordinance. Without having researched this beforehand, Planner LeBlanc is not aware of anything.

Warmbier reminded the Board that we cannot consider the financial cost the applicant will incur in accommodating the ordinance. Warmbier feels that this would be self created. It is not an exceptional or unique circumstance with regard to the parcel. Warmbier stressed that this is not a variance for the family, but for the parcel. He does not feel that this is substantial justice because something could be built in the back. He does not feel that this is the minimum variance because, again, they could use the rear yard. McBrien stated this was a case of compassion vs. compliance. They chose this house before their child was born. It is a sad set of circumstances, but he cannot find a way around the five criteria.

Move to deny the applicant's request for relief of side setback based on the fact that it simply did not meet the five criteria.

- 1. Not exceptional**
- 2. Not unique**
- 3. This would be self-created**
- 4. This would not prevent substantial justice**
- 5. It is not the minimum variance given the fact that the variance is likely not necessary to accomplish what it is that they are asking.**

MOTION: Warmbier. SUPPORT: McBrien. Roll call: Eslinger - Yes, Levan - Yes, McBrien – Yes, Van Keulen - Yes, Warmbier - Yes. Motion carried.

Adjournment: 6:31 p.m.

ZBA Training

Next Meeting: December 17, 2013.

Julie Lovelace
Zoning Administrator

Wade Van Keulen
Chair, Zoning Board of Appeals