

DRAFT JAN.16, 2008
APPROVED FEB. 20,2008

**GRATTAN TOWNSHIP
ZONING BOARD OF APPEALS
REGULAR MEETING
JANUARY 16, 2008**

THE MEETING WAS CALLED TO ORDER AT 7:00 P.M. BY CHAIRMAN PAT MOONEY, FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

MEMBERS PRESENT: BRIAN HEETHUIS, GLEN JONKER, AL BERRY, PAT MOONEY, NANCY BENNER AND ALTERNATE JOHN JAKEWAY (REPLACING GEORGE POULIAS)

MEMBER ABSENT: GEORGE POULIAS AND BRIAN JOHNSON.

AGENDA- MOTION TO APPROVE AS AMENDED BY NANCY BENNER, SECOND AL BERRY. ALL AYES. AGENDA APPROVED.

MINUTES- MOTION TO ACCEPT THE CORRECTED DECEMBER 19, 2007 MINUTES BY AL BERRY, SECOND BY NANCY BENNER. ALL AYES. MINUTES APPROVED.

APPEAL/REQUEST FOR INTERPRETATION/VARIANCE REQUEST

1. Applicant's/Property Owners Name; Address and/or Property I.D. No.

Dr. and Mrs. Terrence Emiley

8065 Cowan Lake Dr. NE

Rockford, Mi 49341

Parcel # 41-12-06-127-004

Zoned RL

The Subject Property is lawfully nonconforming, by virtue of measuring 1.84 acres in area, rather than meeting the minimum area of 2.0 acres, as required by Section 7.04E of the RL District.

2. Summary of Appeal/Request for Interpretation/Variance Sought.

In summary, the applicants desire to divide parcel no. 41-12-06-127-004 (the "Subject Parcel") into two nonconforming lots, as follows:

- The lakefront portion would become a single parcel that would be even more nonconforming with the minimum lot area requirement of the R-L District. Specifically, the area of the resulting lakefront parcel would be reduced from 1.84 acres to 1.18 acres. This parcel would continue to be owned by the Rademachers.
- The "back" portion of the Subject Parcel would become a new resulting parcel that would not conform with either the minimum lot area or minimum lot width requirements of the R-L District. Specifically, the area and width of the resulting "back" parcel would be 0.66 acres and approximately 170 feet, respectively. The "back" parcel, if created, would be subject to a recorded conservation easement that restricted its use to passive recreational purposes, such as gardening. The Emileys would purchase this parcel from the Rademachers.

The application includes three separate components, as follows:

1. The applicants are appealing the zoning administrator's determination that a variance is required for the proposed lot split. Appellants are, in effect, requesting that the BZA interpret Section 4.04E of the zoning ordinance as allowing the Planning Commission to approve, as a special land use, the creation of two nonconforming lots, one of which is already improved with a dwelling and which is already used for lake access.
2. In the alternative, the applicants are requesting that the BZA exercise its authority under Section 18.11 of the zoning ordinance, for the purpose of determining that the lakefront portion and the "back" portion of the Subject Parcel already constitute separate parcels under 3.17E of the zoning ordinance, such that each of these parcels would already be deemed to have lawful nonconforming status.
3. Also in the alternative, the applicants are requesting dimensional variances from Sections 4.01C, 4.04D, 4.04E and 7.04E of the zoning ordinance, so as to allow the creation of two nonconforming lots, one of which is already improved with a dwelling and which is already used for lake access.

3. Summary of Written Documentation. SEE ATTACHED

4. Overview of Application. Al Berry read the notice of public hearing, as it appeared in the newspaper.

5. Summary of Applicant's Presentation

The applicants state as follows with respect to each of the standards for a variance, and also with respect to their appeal and request for interpretation: SEE ATTACHED

6. **Comments from Public Hearing.** None (public hearing was held at December 19, 2007 meeting)

7. **BZA Discussion and Deliberation**

The Township Attorney provided the BZA with an overview of the application, including a separate description of the appeal, request for interpretation and request for dimensional variances. The Township Attorney advised that the appeal and request for interpretation should be considered and voted upon first, since it would be unnecessary to consider a variance if the BZA approved either of the first two requests.

After BZA deliberation and discussion of the Attorney's advise, Nancy Benner made a motion to uphold the zoning administrator's determination that the applicants' requested lot split cannot be approved under Section 4.04E of the zoning ordinance, for the reason that this provision does not allow the creation of two nonconforming lots, one of which is already improved with a dwelling and which is already used for obtaining lake access. Seconded by Glenn Jonker. Roll call vote: Brian Heethius-yes, Glen Jonker-yes, Al Berry-yes, Pat Money-yes, John Jakeway-yes, Nancy Benner-yes. Motion approved – appeal denied.

The BZA then considered the request for interpretation, after which Brian Heethius made a motion to reject the applicants' request that parcel # 41-12-06-127-004 be treated as two separate, lawful nonconforming parcels, for the reason that the lakefront and back portion of this parcel are not located on "opposite sides of a public road or public street right-of-way" as contemplated by Section 3.17E, and also for the reason that neither the lakefront nor back portions of this parcel, standing alone, would comply with the dimensional requirements of the R-L District. Seconded by Al Berry. Roll call vote- Brian Heethius-yes, Glenn Jonker-yes, Al Berry-yes, Pat Mooney-yes, John Jakeway-yes, Nancy Benner-yes. Motion approved – request for interpretation denied.

The BZA then considered the applicants' variance request. Nancy Benner emphasized that the variance was being sought for the Rademachers' parcel, and that the variance standards therefore had to be satisfied for the Rademachers' parcel, not the Emileys' parcel. Comments from the BZA members included the following:

- Members noted that the back portion of the Subject Property is wet and low-lying, and probably is not suitable for septic or building purposes, but that this condition is not uncommon in many locations around the Township. A majority of the Rademacher lot is usable, and is already used for residential purposes.
- The Subject Property is not exceptionally narrow, but does have an unusual shape, as a result of being partially divided by the Cowan Lake Drive cul-de-sac easement.

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- No one would ~~be~~ deprived of a property right if the parcel could not be split. A garden could be located on the back portion of the Subject Parcel, whether it was split or not.
 - The applicants did not identify any substantial property right that would be denied to the owners of the Rademacher parcel if the variance were denied.
 - The ZBA stated that the spirit of the zoning ordinance established a strong policy against making a nonconforming parcel even more nonconforming.

8. BZA Decision and Fact Finding on Variance Application

After consideration of the application by the BZA, the BZA hereby concludes as follows:

A. The enforcement of the literal requirements of the Zoning Ordinance would *not* involve practical difficulties because of the exceptional narrowness, shallowness or shape of the land, or because of exceptional topographical conditions or other extraordinary situation of the land or premises. In support of that determination, the BZA hereby makes the following findings of fact:

1. A portion of the Subject Parcel is narrow, but not exceptionally narrow.

2. The Subject Parcel does have an unusual shape, as a result of being partially divided by the Cowan Lake Drive cul-de-sac easement, but the applicants have not shown that this condition results in a practical difficulty that prevents the Subject Parcel from being used as permitted in the RL District, or that the minimum area restrictions of the RL District are unreasonably burdensome.

3. The back portion of the Subject Property is wet and low-lying, and probably is not suitable for septic or building purposes, but this condition is not uncommon to many locations around the Township. A majority of the Rademacher parcel is usable, and is already used for residential purposes. Further, this condition does not prohibit the back portion from being used as a garden, as the applicants desire.

B. Exceptional conditions or extraordinary circumstances *do exist* which are unique to the land, structures or buildings involved, and which are not so general or recurrent in nature so as to make reasonably practicable an amendment to the Zoning Ordinance. In support of that determination, the BZA hereby makes the following findings of fact:

1. There are only a limited number of cul-de-sacs in the Township, and very few of them are located adjacent to parcels like the Subject Parcel, which lies on both sides of the cul-de-sac, with a narrow connecting strip between the front and back portions.

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2. The intervening drainage easement adds to the uniqueness.

C. Literal interpretation of the provisions of the Zoning Ordinance *would not* deprive the applicant of a substantial property right commonly enjoyed by other properties in the same zoning district. In support of that determination, the BZA hereby makes the following findings of fact:

1. A garden could be located on the back portion of the Subject Parcel, whether it was split or not.

2. The applicants have not identified any substantial property right that would be denied to the owners of the Rademacher parcel if the variance were denied.

3. The applicants have not identified any other situation in the Township where an applicant was permitted to create a nonconforming lot and to make a substandard lakefront lot even more nonconforming, for the purpose of allowing one of the parcels to be used for gardening.

4. The Rademachers (or any subsequent owner of the Subject Parcel) could continue to allow gardening on the back portion by way of granting an easement in gross to the Emileys, without the need for a land split.

D. The authorizing of the requested variance *will not* be of substantial detriment to adjacent and nearby properties but *will* be contrary to the spirit and purpose of the Zoning Ordinance. In support of that determination, the BZA hereby makes the following findings of fact:

1. The requested land split would probably not be a detriment to surrounding properties, since the Subject Property is already used for gardening purposes, as the applicants propose.

2. The spirit of the zoning ordinance establishes a strong policy that favors the gradual elimination of nonconforming uses, and therefore, absent compelling circumstances, the BZA should not allow nonconforming lots to become even more nonconforming.

9. **Motion and Voting.** Motion by Brian Heethius to **table** the Emiley/Rademacher variance application for the purpose of allowing the Township Attorney to prepare a proposed denying resolution for consideration by the ZBA at its next regular meeting. Seconded by John Jakeway. Roll call vote- Brian Heethius-yes, Glenn Jonker-yes, Al Berry-yes, Pat Mooney-yes, John Jakeway-yes, Nancy Benner-yes. Motion carried.

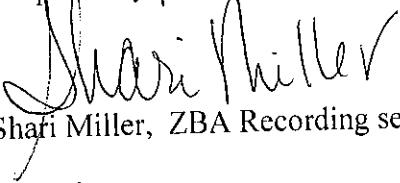
New Business

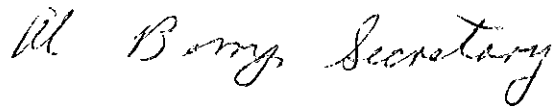
1. Discuss updated ZBA template- a new template will be made which will include the revised variance standards from the amended ordinance.

Next meeting: February 20, 2008

Adjourned: 8:40^{3:40} p.m.

Respectfully Submitted,


Shari Miller, ZBA Recording secretary


W. Barry, Secretary