



# Fruitland Township Zoning Board of Appeals Minutes of April 9, 2007

***CALLED TO ORDER:*** 6:30 p.m.

***PLEDGE OF ALLEGIANCE***

***PRESENT:*** Chairman Clarence Gaertner, Board members, Penny Larson, Brian Lernowich and John Warner.

***ABSENT:*** Board member Gary Bole.

***ALSO PRESENT:*** Zoning Administrator Sandel and two (2) interested parties.

***NOMINATIONS:***

Motion by Penny Larson to nominate John Warner to serve as Chairman to the Fruitland Township Zoning Board of Appeals.

Motion by Penny Larson, second from Brian Lernowich, ***ADOPTED***, to close nominations and elect John Warner to serve as Chairman to the Fruitland Township Zoning Board of Appeals.

***4 AYES, 1 ABSENT***

Motion by John Warner to nominate Clarence Gaertner to serve as Vice Chairman to the Fruitland Township Zoning Board of Appeals.

Motion by Penny Larson, second from John Warner, ***ADOPTED***, to close nominations and elect Clarence Gaertner as Vice Chairman to the Fruitland Township Zoning Board of Appeals.

***4 AYES, 1 ABSENT***

Motion by Clarence Gaertner to nominate Penny Larson as Secretary to the Fruitland Township Zoning Board of Appeals.

Motion by John Warner, second from Clarence Gaertner, ***ADOPTED***, to close nominations and elect Penny Larson as Secretary to the Fruitland Township Zoning Board of Appeals.

***4 AYES, 1 ABSENT***

Motion by John Warner, second Penny Larson **ADOPTED**, to appoint Wendy Bloem as Recording Secretary to the Fruitland Township Zoning Board of Appeals.

**4 AYES, 1 ABSENT**

**AGENDA:**

Motion by Clarence Gaertner, second from Brian Lernowich, **ADOPTED**, to approve the April 9, 2007 Zoning Board of Appeals agenda.

**4 AYES, 1 ABSENT**

Chairman Warner informed the board that Mr. Gustavson's variance request was adjourned from the November 13, 2006 meeting Zoning Board of Appeals.

Chairman Warner welcomed guests and explained the purpose and the function of the Zoning Board of Appeals. Chairman Warner stated for the record that an alternate was not called to replace Board member Gary Bole.

**MINUTES:**

Motion by Penny Larson, second from Clarence Gaertner **ADOPTED**, to amend the December 11, 2006 meeting minutes, amended on page 2 motion under roll call vote strike Warner AYE and add Larson AYE.

**4 AYES, 1 ABSENT**

**Public Hearing:**

I. 2340 W. River Road

61-06-135-400-0006-10

**Bruce Gustavson**, homeowner, requests a variance from Article III, Section 3.17 B (4) Excavations, Holes or Ponds, there shall be a minimum setback of one hundred (100) feet from the outside edge of any pond excavation to any dwelling and minimum setback of one hundred (100) feet from any property line.

**Public Hearing opened at 6:41 p.m.**

**Zoning Administrator Comment:**

Zoning Administrator Sandel stated that Mr. Gustavson has a pond approximately seventy (70) feet from his house and pole barn. He stated the issue is not the setback of the pond; the issue is water coming approximately three hundred (300) foot from the road running into Mr. Lanore's ditch which is twenty (20) feet from Mr. Gustavson's line. He feels the drainage problem can be settled between Mr. Gustavson and his neighbor Mr. Lanore. Zoning Administrator Sandel stated that Mr. Gustavson has a ditch coming out of his pond going up towards River Road which is full of water; he feels if this ditch is cleaned out or he constructs a pipe to keep the small flow of water from running from his pond to Mr. Lanore's property, it should take care of the problem.

**Correspondence:**

- Muskegon County Drain Commission – letter from Mr. Hulka dated December 28, 2006, stating he wants a four foot berm around Mr. Gustavsons' pond.
- Letter from Mr. and Mrs. Jim Lanore dated September 12, 2006 citing water from Mr. Gustavson's pond is running on their property.
- Letter from Mr. Gustavson dated September 12, 2006 to Mr. Hulka Muskegon County Drain Commissioner and Township Supervisor Boughton that there is no water running from his property to Mr. Lanores property.

- Letter from Westshore Consulting to Mr. Hulka dated December 4, 2006 stating that there is no problem with Mr. Gustavson's pond it was constructed with the proper MDEQ and Township permits, and appears to be functioning as intended

Mr. Gustavson homeowner stated that if the township is willing to give him a seventy (70) foot variance he would be willing to work with Mr. Lanore to fix this problem. Mr. Gustavson gave a brief history of his request to build his pond to Fruitland Township. He stated that he received approval and permits on his pond from Fruitland Township, Muskegon County Drain Commission, Soil and Erosion and MDEQ. These permits and approvals were all received by April 2005. He stated that Mr. Hulka from the Muskegon County Drain Commission wants him to put a 4 foot berm around his pond; he stated no other resident in the township has had to build a berm around their pond and he will not do this. He stated he will deal with Mr. Hulka regarding this request.

Zoning Administrator Sandel stated that the berm is not an issue tonight; it is the setback of the pond from the house and the pole barn.

***Public Comment:***

- Jim Lanore, 2400 River Road – stated that he wants the one hundred (100) foot setback back adhered to along his property line, he wants Mr. Gustavson to put a drain in to keep the water away from his house, he doesn't want this drainage to go into the creek.

Chairman Warner asked Zoning Administrator Sandel if Mr. Gustavson met all township requirements before he built his pond. In viewing plans it shows that Mr. Gustavson did meet all Township requirements.

Mr. Gustavson provided Chairman Warner with a copy of a report from Wilcox Engineering dated March 29, 2006; his pond was already dug by this time. This report shows the pond is closer to the house and pole barn than warranted by township ordinance.

Board member Gaertner asked Zoning Administrator Sandel what his estimate is on the side yard setback for this pond. Zoning Administrator stated that the side yard setback ranges from 101 feet to 98 feet due to the water going up and down.

***Public Comment closed at 7:15 p.m.***

***Board Comments:***

Board member Gaertner asked Zoning Administrator Sandel if the variance only concerns the setback from the pond to the house and pole barn. Zoning Administrator Sandel stated "yes" this is the only issue if Mr. Gustavson and Mr. Lanore are willing to work together on the drain issue.

Board member Gaertner asked if making the pond smaller would make any difference, would it have any effect on the west, east or rear of the pond. Chairman Warner stated that by filling part of the pond in it would force the water to go somewhere else, he stated that this would be only temporary; eventually it would go back to its normal level. Board member Larson stated that this could cause a concern for Mr. Lanore. Zoning Administrator Sandel stated that this could change the whole dynamics of the pond, due to the 5 to 1 and 3 to 1 slope that is required. There is also a significant amount of work involved in this and it could be a very costly project. Consensus of the board is that it would be too costly for the applicant to have him make his pond smaller to meet the one hundred (100) foot setback.

Chairman Warner stated that the pond was done before the house was built; there was no reason to build the house too close to the pond. Board member Gaertner feels that due to the state of affairs that currently exist trying to correct this problem he will recommend granting the variance.

Motion by Clarence Gaertner II, second from Brian Lernowich, **ADOPTED**, to grant a thirty (30) foot variance to #61-06-135-400-0006-10 2340, W. River Road; citing Article III, Section 3.17 B (4); citing the state of affairs that currently exist at this property and the cost to bring in fill dirt to meet the townships ordinance of a one hundred (100) foot setback from the residence and barn

**Roll Call: Lernowich-AYE, Larson -NAY, Gaertner-AYE, Warner-AYE. 3 AYES, 1-NAY, 1 ABSENT**

Motion by Penny Larson, second from Clarence Gaertner II, **ADOPTED**, to recommend that the Fruitland Township Board monitor; through Zoning Administrator Sandel; the progress of Mr. Gustavson correcting the water draining issue.

**Roll Call: Lernowich-AYE, Larson - AYE, Gaertner-AYE, Warner-AYE. 4 AYES, 0-NAYS, 1 ABSENT**

Chairman Warner and the board reviewed the variance criteria.

Motion by Penny Larson, second from Clarence Gaertner, **ADOPTED**, to adjourn the April 9, 2007 Zoning Board of Appeals meeting at 7:42 p.m.

**4 AYES, 1 ABSENT**

Respectfully Submitted,

Wendy Bloem, Recording Secretary  
Zoning Board of Appeals