



Manistee County Planning Building, 395 Third Street Manistee, Michigan 49660

September 28, 2022

ZBA Members
Onekama Township
5435 Main St
Onekama, MI 49675

Dear ZBA Members,

James Stokes and Linda Ray are seeking two individual requests from the Zoning Board of Appeals. The first request is for an interpretation of the Onekama Township Zoning Ordinance. The second request is an appeal of the Zoning Administrator's enforcement related decisions. The enforcement related decisions are regarding the property identified as 51-11-370-103-00, commonly known as 8793 Portage Point Drive, Onekama, MI 49675.

Background:

I received an interpretation request and appeal of enforcement related decision for a land use permit issued for the property addressed as 8793 Portage Point Drive. The interpretation request is for the following regulation from Article 80 – Nonconformities:

8003. Extensions:

Nonconforming structures or uses, may not be added to, extended, reconstructed or structurally altered, expanded during its life; and a parcel may not be used or built upon; except for any one or combination of the following restrictions:

A. Expansion or alteration of any non-conformity shall require a variance, unless all setbacks can be met and it does not expand the non-conformity.

Attached to this memo is the entirety of Article 80 for your reference.

The request is also for an appeal of enforcement related decisions of the Zoning Administrator for a land use permit issued for 8793 Portage Point Drive, Onekama, MI 49675 to expand an existing non-conforming garage. The details of the appeal are included in the narrative provided by the applicant and the land use permit issued is included with the narrative provided.

Please review the following information:

- Ms. Ray and Mr. Stokes "Request for Appeal" Application

- Narrative Provided by Applicant with Supporting Documentation
- Supplemental Appeal Provided by applicant.
- Letter from Township Attorney and Opinion from ZA on Interpretation and Non-Enforcement Action
- Article 80 – Nonconformities, of the Onekama Township Zoning Ordinance
- Map of Property with Parcel Lines, Circa 2021
- Three Photos Taken May 2022 that Show the Current Building Conditions
- Notice of Meeting/Public Hearing for Newspaper
- Letters that were sent to Parcel Owners and Occupants per Planning and Enabling Act 2008
- Motions Memo

If you have any questions or concerns, feel free to reach out to me via email or phone.

Regards,



Katie Mehl
Planning and Zoning Administrator
Manistee County
231.398.3525
kmehl@manisteecountymi.gov

Manistee County
Planning Department



MS. Ray and Mr. Stokes
“Request for Appeal” Application

Zoning Board of Appeals/Planning & Zoning
395 Third Street
Manistee, MI 49660
231.723.6041 (phone)
231.398.3526 (fax)

Request for Appeal

Onekama Township Zoning Board of Appeals
Please Print

Submission of Application		
After receipt of a complete application a public hearing will be scheduled. You will receive written notice from the Township indicating the date and time. Applicant or Applicant's representative should be present at the hearing to explain the request to the Board and to answer any questions that they may have. After the hearing, the Board of Appeals will make a decision to approve, approve with conditions, or deny your request. Applicant will receive written notice of their decision. Each application shall be accompanied by the payment of a fee \$750.00 in accordance with the schedule of fees adopted by the Township Board to cover the costs of processing the application.		
Applicant Information		
Name of Owner: Linda A. Ray		
Address: 1896 Paloma Court, Lafayette, IN 47909		
Phone #:	Cell#:(765) 426-7322	e-mail:raylindaann@gmail.com
Name of Agent (if applicable): Co-Owner: James R. Stokes		
Address:3621 Passion Vine Drive, Alva, FL 33920		
Phone #:	Cell#:(616) 890-1533	e-mail:stokes59@aol.com
Property Information		
Address:8793 Portage Point Drive, Onekama, MI 49675		Parcel #51-11-370-103-00
Present/proposed Land Use:Appeal-Violation of Zoning Ordinance-Bring it into compliance		
Names and addresses of all persons, firms or corporations having a legal or equitable interest in the land: David and Paula Vanecek/Paula Vanecek Trust, 8793 Portage Point Drive, Onekama, MI 49675		
List of Deed Restrictions (cite Liber & Page) and attach additional sheets if necessary:		
Has a previous appeal been made with respect to this property? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If a previous appeal, re-zoning or special use permit application was made state the date, nature of action requested and the decision: A request to obtain a variance to expand a non-conforming structure was denied on May 26, 2021.		
Detailed Narrative of Request		
State exactly what is intended to be done, on or with the property that necessitates a variance from the Zoning Board of Appeals. Please use another page and address "Specific Variance" section. See attached Letter of Appeal.		

* See Appeal letter.

Detailed Request and Justification			
	Identify each requested variance	Required by Zoning	Requested by Appellant
<input type="checkbox"/>	Front Yard Set Back	From	To
<input type="checkbox"/>	Side Yard Set Back	From	To
<input type="checkbox"/>	Side Yard Set Back	From	To
<input type="checkbox"/>	Rear Yard Set Back	From	To
<input type="checkbox"/>	Waterfront Set Back	From	To
<input type="checkbox"/>	Height	From	To
<input type="checkbox"/>	Lot Coverage	From	To
<input type="checkbox"/>	Off Street Parking	From	To
<input type="checkbox"/>	Other:	From	To
Please Mark all characteristics of your property which require the granting of a variance			
<input type="checkbox"/>	Too Narrow	Explain:	
<input type="checkbox"/>	Too Small	Explain:	
<input type="checkbox"/>	Too Shallow	Explain:	
<input type="checkbox"/>	Elevation (height)	Explain:	
<input type="checkbox"/>	Slope	Explain:	
<input type="checkbox"/>	Shape	Explain:	
<input type="checkbox"/>	Soil	Explain:	
<input type="checkbox"/>	Other:	Explain:	
Specific Variance			
<p>The Board shall have the power to authorize, upon an appeal, specific variances from such requirements as parcel area and width regulations, building height regulations, yard and depth regulations. The Board of Appeals shall hear and decide such matters as the Board of Appeals is specifically authorized to pass on as provided in this Ordinance and such matters as may be provided by statute.</p>			
<p>The following is for ZBA Members Only. It is shown so the applicant knows what is being looked at when determining if their variance will be granted. The written narrative should address Section A. questions 1-5.</p>			
<p>A variance from the terms of this Ordinance shall not be granted by the Board of Appeals unless and until:</p>			
<p>A. A written application for a variance is submitted with a detailed narrative demonstrating the following conditions:</p>			<input type="checkbox"/> yes <input type="checkbox"/> no
<p>1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.</p>			<input type="checkbox"/> yes <input type="checkbox"/> no
<p>Justification:</p>			
<p>2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.</p>			<input type="checkbox"/> yes <input type="checkbox"/> no
<p>Justification:</p>			
<p>3. That the special conditions and circumstances do not result from the actions of the applicant.</p>			<input type="checkbox"/> yes <input type="checkbox"/> no
<p>Justification:</p>			
<p>4. That granting the variance will not alter the essential character of the area.</p>			<input type="checkbox"/> yes <input type="checkbox"/> no
<p>Justification:</p>			
<p>5. That no nonconforming use of neighboring lands, structures, or buildings, in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.</p>			<input type="checkbox"/> yes <input type="checkbox"/> no
<p>Justification:</p>			

B. The Board of Appeals shall make findings that the requirements of this Ordinance have been met by the applicant for a variance.	<input type="checkbox"/> yes <input type="checkbox"/> no
Justification:	
C. The Board of Appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.	<input type="checkbox"/> yes <input type="checkbox"/> no
Justification:	
D. The Board of Appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.	<input type="checkbox"/> yes <input type="checkbox"/> no
Justification:	
E. In granting any variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance and including requirements for buffering between uses by landscaping, fencing, vegetation or other similar methods. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 9803 of this Ordinance.	<input type="checkbox"/> yes <input type="checkbox"/> no
Justification:	
F. Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.	<input type="checkbox"/> yes <input type="checkbox"/> no
Justification:	

Site Plan Requirements (For Applicant)	
The applicant is responsible to provide a survey and legal description unless waived by Zoning Administrator. The following are the minimums required for variance request, but addition requirements can be requested, depending on type of development. If the development is a Special Use, Planned Unit Development or Phased Project contact the Zoning Administrator for additional requirements.	
	The property, identified by parcel lines and location and size.
	Name and address of the property owner(s), developers), and designers), and their interest in said properties.
	The scale, north point.
	Natural features such as woodlots, waterbodies, wetlands, high risk erosion areas, slopes over 25%, beach, sand dunes, drainage and similar features.
	The location of proposed and main and accessory buildings, existing structures, fences on the site, the height of all buildings, square footage of floor space and set-backs.
	The proposed driveway, if any.
	Location dimensions of existing and proposed man-made features such as buildings, structures, utility easements, water, storm sewer and sanitary sewer lines, storm water drainage and retention lines.
	Surface and subsurface storm water drainage and retention systems for paved, roof, and other impermeable surfaces on the site.
	Neighboring driveways, and other vehicular circulation features within and adjacent to the site; also the location, size and number of parking spaces in the off-street parking areas and the identification of service lanes, service parking and snow storage areas.
	Any proposed alterations to the topography and other natural features shall be indicated.
	Any proposed location of connections to existing utilities and proposed extensions thereof.
	A description of the proposed development.
	A vicinity map showing the location of the site in relation to the surrounding street system.

Rules – The following rules shall be applied in the granting of variances

The Board may specify, in writing, such conditions regarding the character, location, and other features that will in its judgment, secure the objectives and purposes of this Ordinance. The breach of any such condition shall automatically invalidate the permit granted.

9604. Voiding of and Reapplication for Variance The following provisions shall apply:

A. Each variance granted under the provisions of this Ordinance may become null and void unless:

1. The construction authorized by such variance or permit has begun within three hundred sixty-five (365) days after the granting of such variance and pursued diligently to completion; or
2. The occupancy of land or buildings authorized by such variance has taken place within three hundred sixty-five (365) days after the granting of such variance.

B. No application for a variance which has been denied wholly or in part by the Board of Appeals shall be resubmitted for a period of three hundred and sixty-five (365) days from such denial, except on grounds of new evidence or proof of changed conditions found by the Board of Appeals to be valid.

9605. Interpretation of Ordinance Text:

A. **Interpretation** - Pursuant to the requirements of Michigan Zoning Enabling Act, P.A. 110 of 2006, (MCL 125.3101 et seq.), nothing contained herein shall be construed as prohibiting the Zoning Board of Appeals from interpreting the text of this ordinance in such a fashion that will allow in a land use district buildings, uses and structures which are sufficiently similar to the specifically delineated permitted or special uses in that land use district, under the same permitted or special use regulations. Such interpretation shall not have the effect of granting a variance but rather shall be deemed only to be an interpretation of the ordinance text.

B. **Standards** - In determining whether a proposed building, use or structure is sufficiently similar to a specifically delineated permitted or special use, the Zoning Board of Appeals shall consider the relevant policies for the Land Use District in question, the nature, use and purpose of the proposed building, use or structure and whether or not the proposed building, use or structure is a permitted or special use in any other Land Use District in the Township.

C. **Precedent** - An earlier determination under this section shall be considered a precedent for other applications proposing an identical building, use or structure in the same Land Use District, provided the earlier determination was made with respect to a building, use or structure sufficiently similar to a specifically delineated permitted use in the Land Use District and not with respect to a specifically delineated special use. An earlier determination with respect to an identical, sufficiently similar special use shall be considered as a precedent only to the extent that such sufficiently similar special use shall be considered as a candidate for a special use permit in that Land Use District, but shall otherwise be subject to all requirements of this Ordinance.

9606. Appeals to the Board of Appeals The following provisions shall apply:

A. **Appeals, How Taken** - Appeal from the ruling of the Zoning Administrator concerning the enforcement, administration, and interpretation of this Ordinance, text and map, may be made to the Board of Appeals. The demand for appeal is filed with the Zoning Administrator specifying the grounds thereof within thirty (30) days of the date of a decision received by the appellant. Date of receipt shall be presumed to be five (5) days after the date shown on the decision. The demand for appeal shall be on a form prepared by the Township for that purpose and shall also include a site plan. The Zoning Administrator shall forthwith transmit to the Board of Appeals all of the papers constituting the record upon which the action appealed from was taken.

B. **Who May Appeal** - Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board, agency, or bureau of the Township, County, or State.

C. **Fee for Appeal** - A fee prescribed by the Township Board shall be paid to the Zoning Administrator at the time of filing the demand for appeal. If the Township Board finds an applicant to be indigent, the fee may be waived by the Township Board.

D. **Effect of Appeal: Restraining Order** - An appeal stops all proceedings and construction on the action appealed. The Board of Appeals may allow continuance of certain activities if it is shown such actions are necessary to prevent imminent peril to life or property.

E. **Hearing By the Board of Appeals: Request, Notice, Hearing** - When a request for appeal has been filed in proper form with the Board of Appeals, the Zoning Administrator shall immediately place the said request for appeal upon the calendar for hearing, and cause notice to interested parties, stating the time, date, place, and object of the hearing to be served personally or by certified return receipt mail if necessary.

F. Representation at Hearing - Upon the hearing, any party or parties may appear in person or by their agent or an attorney.

G. Decisions of the Board of Appeals and Appeals to the Circuit Court - The Board of Appeals shall decide upon all matters appealed within sixty (60) days of the receipt of a demand for appeal, unless mutually agreed by both parties to extend the time. The Board of Appeals:

1. May reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed;
2. Shall make such order, requirement, decision or determination;
3. Shall have all the powers of the Zoning Administrator for administration and enforcement of this Ordinance;
4. Shall be in the form of a resolution containing a full record of the findings and determination of the Board of Appeals in each particular case.

H. The decision of the board of appeals shall be final. A party aggrieved by the decision may appeal to the circuit court for the county in which the property is located as provided in the Michigan Zoning Enabling Act of 2006, MCL 125.3606.

Authorization

AFFIDAVIT:

The undersigned acknowledges that if a variance is granted or other decisions favorable to the undersigned is rendered upon this appeal, the said decision does not relieve the applicant from compliance with all other provisions of the Township of Onkama Zoning Ordinance; the undersigned further affirms that he/she or they is (are) the (owner/lessee/authorized agent for the owner) involved in the appeal and the answers and statements herein contained and the information herewith submitted are in all respects true and correct to the best of his, her or their knowledge and belief. By signing this affidavit permission is given for Zoning Board of Appeals Members to make a site inspection if necessary.

Signature: *Linda Ray* Date: 7/19/2022
1b d1s4a/PaFABzFAIbwvYzwNG4

Signature: *James F. Stedman* Date: 7/19/2022
1b dLTdDw2Xz6B2AJuRHXIQQE1u

☒ Fee of \$750.00 enclosed and Site Plan for project attached (request cannot be issued without site plan).
ZAMehl indicated that a site plan would not be applicable under the circumstances.

Office Use Only

Fee: ☒ \$750.00

Receipt #

Date Received:

Hearing Date:

ZBA:

Narrative Provided by Applicant
with Supporting Documentation

July 25, 2022

VIA EMAIL AND FEDEX OVERNIGHT DELIVERY

Attention: Katie Mehl, Zoning Administrator
Onekama Township
5435 Main Street, PO 458,
Onekama, Michigan 49675
231-398-3525

Onekama Township
Zoning Board of Appeals
395 Third Street,
Manistee, Michigan 49660

Re: Appeal of Zoning Administrator Mehl's June 29, 2022 Interpretation and Enforcement Decisions

To whom it may concern:

On behalf of the Stokes and Ray family,¹ I am writing to appeal the Onekama Township Zoning Administrator's (the "ZA")'s June 29 Onekama Township Zoning Ordinance ("Zoning Ordinance")² email interpretation and enforcement-related decisions attached hereto as **Exhibit 1 and 2**, respectively. In May of 2022, my family notified ZA Mehl that Mr. Vanecek had unlawfully expanded his nonconforming garage located at 8793 Portage Point Dr., Onekama, Michigan 49675, Parcel Identification Number 11-370-103-00 in the Resort Residential RR-3 District ("R3 District"). Unfortunately, we believe that ZA Mehl's determinations related to Mr. Vanecek's upward and outward expansion of his nonconforming garage were inconsistent with the law and facts. In fact, just one year prior, your Board, the Onekama Township Zoning Board of Appeals (the "Onekama Township ZBA"), had denied Mr. Vanecek's request for a variance to expand his garage in a remarkably similar manner. See **Exhibit 3** May 26, 2021 Onekama Township ZBA Meeting Minutes. Accordingly, we are taking this measure to preserve our property rights by filing this appeal in a timely manner. We briefly address each basis for our appeal below.

I. Email 1 (Exhibit 1)

We believe that ZA Mehl's first June 29 email Zoning Ordinance interpretation and non-enforcement decision is inconsistent with the plain language of the Ordinance, Michigan law, and the facts. Under the Zoning Ordinance, any "expansion or alteration" of a nonconforming structure, whether or not it increases the nonconformity, requires a variance with one exception, necessitating the satisfaction of two conditions:

Expansion or alteration of any nonconformity shall require a variance, unless [1] all setbacks can be met and [2] it does not expand the non-conformity.

¹ The Stokes and Ray family own the property located at located at 8831 Portage Point Dr., Onekama, Michigan, 49675.

² See Zoning Ordinance, as amended January 2022, located at: https://www.onekama.info/files/ugd/111d5a_70f16b9eb99f4ee891fd37a76cb9343f.pdf; see also Zoning Map Township Zoning Map, located at: https://www.onekama.info/files/ugd/111d5a_1317abd5873a4ff4bb6140777a9a5424.pdf.

Section 8003(A)(Emphasis added); Section 501 (“**The word ‘shall’ is always mandatory and not merely directory**”) (Emphasis added); *In re Koehler Est.*, 314 Mich. App. 667, 681–82, 888 N.W.2d 432, 439 (2016) (“Plainly, the use of the conjunctive term ‘and’ reflects that *both* requirements must be met . . . “[T]he words [‘and’ and ‘or’] are not interchangeable and their strict meaning should be followed.”); and *Sandstone Creek Solar, LLC v. Twp. of Benton*, 335 Mich. App. 683, 698, 967 N.W.2d 890, 899, *appeal denied*, 508 Mich. 947, 964 N.W.2d 572 (2021) (explaining that when interpreting a zoning ordinance, it is necessary to “avoid a construction of the [ordinance] that would render any part of it surplusage or nugatory”). As explained more fully below, ZA Mehl’s determination that Mr. Vanecek “**is not increasing the non-conformity by adding height and the setback was a grandfathered, non-conforming legal setback for that structure**” is not grounded in the clearly defined language of Section 8003 and the plain meaning of the undefined language of Section 8003.

Although ZA Mehl indicated that she had based her decision in this matter largely on the Michigan Court of Appeals decision in *Randazzo v. Lake Twp.*, No. 348559, 2020 WL 7296982, at *3 (Mich. Ct. App. Dec. 10, 2020), Michigan law is clear that her interpretation must be limited to the clearly defined terms and the plain meaning of the undefined terms. *See* ZA Mehl’s June 22 Email Citing *Randazzo* attached hereto as **Exhibit 4**; *see also* *People v. Lewis*, 302 Mich. App. 338, 342, 839 N.W.2d 37, 41 (2013) (“**If [an ordinance] specifically defines a term, the [ordinance] definition is controlling.**”)(Emphasis added); *see also* *Risko v. Grand Haven Charter Twp. Zoning Bd. of Appeals*, 284 Mich. App. 453, 460, 773 N.W.2d 730, 735 (2009) (“**[U]nless explicitly defined in a[n] [ordinance], ‘every word or phrase of a[n] [ordinance] should be accorded its plain and ordinary meaning, taking into account the context in which the words are used.’**”) (Emphasis added). *Randazzo* is inapplicable because (a) the Zoning Ordinance utilizes clear, unambiguous, well-defined language (such as “setbacks,” as opposed to “grandfathered, non-conforming legal setback”), and (b) even if the Zoning Ordinance had not used such clear and well-defined terms, the Ordinance and facts here have critical distinctions from the Lake Township Zoning Ordinance and facts in *Randazzo* that make *Randazzo* inapplicable.

First, Mr. Vanecek’s upward nonconforming garage expansion did not meet the R-3 District’s 25-foot rear yard setback requirement as the existing structure on which the expansion sits is located just 18 inches from the property line. *See* Section 4203. Although ZA Mehl stated that Vanecek’s setback was “**a grandfathered, nonconforming legal setback**,” the Zoning Ordinance simply does not acknowledge the existence of “a grandfathered non-conforming legal setback” for alterations and expansions of nonconforming structures. Instead, it simply requires expansions or alterations of nonconforming structures to meet the “setbacks,” which is defined in the Zoning Ordinance as “the minimum horizontal distance, measured toward the center of a parcel from the property lines . . . which no portion of a building, including any steps, eaves, decks or unenclosed porches may be erected or permanently maintained.” *See* Section 8003(A) (“Expansion or alteration of any nonconformity shall require a variance, unless [1] all **setbacks** can be met and [2] it does not expand the non-conformity.”); *Lewis*, 302 Mich. App. at 342 (“**If [an ordinance] specifically defines a term, the [ordinance] definition is controlling**”)(Emphasis added); Section 503; and *Risko*, 284 Mich. App. at 460 (“**Unless explicitly defined in a[n] [ordinance], ‘every word or phrase of a[n] [ordinance] should be accorded its plain and ordinary meaning, taking into account the context in which the words are used.’**”) (Emphasis added). The definition of setbacks plainly does not refer to “**a grandfathered, nonconforming legal setback**.”

Moreover, by conflating the Zoning Ordinance “setback” as meaning “grandfathered, nonconforming, legal setback” (i.e., where the nonconforming structure sat), ZA Mehl has rendered Section 8003(A)’s first condition that “**all setbacks can be met**” to mean the same thing as the second condition “**it does not expand the non-conformity.**” *Sandstone*, 335 Mich. App. 683, 698, 967 N.W.2d 890, 899, *appeal denied*, 508 Mich. 947, 964 N.W.2d 572 (2021) (explaining that when interpreting a zoning ordinance, it is necessary to “avoid a construction of the [ordinance] that would render any part of it surplusage or nugatory”) (Emphasis added). Here, the rear yard setback of Mr. Vanecek’s garage is the

nonconformity, so any outward expansion would not meet the setbacks and would also increase the nonconformity.

Not only is ZA Mehl's interpretation in conflict with the rules of ordinance interpretation that require interpretations that avoid rendering conditions meaningless, it is also against the clear intent of the Zoning Ordinance to eliminate nonconforming structures. *See* Section 8001 (explaining that nonconforming structures **"... are not encouraged to survive. It is further the intent of this Ordinance that such nonconforming uses shall not be enlarged, expanded or extended."**). Zoning ordinances are designed to mitigate conflicts between land uses and land owners. In a cottage community where an abundance of nonconforming structures exist, ZA Mehl's interpretation will perpetuate and enlarge nonconforming structures in virtually unlimited manner just steps away from property lines, perhaps even, your own. This will inevitably increase conflicts between land owners, defeating the purpose of the Zoning Ordinance.

However, to justify ZA Mehl's interpretation that Mr. Vanecek's garage was **"a grandfathered, nonconforming legal setback,"** she erroneously looked to the Lake Township Zoning Ordinance in *Randazzo*, which provided, in relevant part, that: "except where the **nonconforming setback** of a building or structure is not less than one-half (½) of the distance required by this Ordinance." The Court in *Randazzo* noted that "the nonconformity at issue in [that] appeal [was] the setback requirement of the building." *Id.* The Court reasoned that "[t]he proposed [upward] improvements to the property would not further **decrease the setback, or, in other terms, increase the nonconformity of the setback.**" *Id.* As noted above, *Randazzo* is inapplicable here because the Zoning Ordinance uses different language that was unambiguous and clearly defined. In fact, the Zoning Ordinance neither references a **"nonconforming setback"** nor **"a grandfathered, nonconforming legal setback"**. Therefore, the facts indicate that Mr. Vanecek's addition required a variance, which would have required notice to my family, and which could only have been approved by the Onkama Township ZBA. *See* MCL 125.6203 (**"The concurring vote of a majority of the members of the zoning board of appeals is necessary . . . to decide in favor of the applicant to grant a variance in the zoning ordinance."**)(Emphasis added); MCL 125.3103 (**"Notice shall also be given as provided . . . to all persons to whom real property is assessed within 300 feet of the property that is the subject of the request . . ."**) (Emphasis added). Simply put, even if Mr. Vanecek's expansion of the existing structure did not increase the nonconformity, the expansion itself certainly did not meet the 25-foot rear yard setback requirements, so a variance was required. *Koehler*, 314 Mich. App. at 681–82 (**"... both requirements must be met . . ."**).

Second, Mr. Vanecek's upward garage expansion also increased the nonconformity as the sidewall height (as measured) increased to 14 feet tall in violation of 12-foot sidewall height restriction for accessory structures. *See* Section 1019(B)(5). To justify ZA Mehl's determination that Mr. Vanecek's upward garage expansion did not increase the nonconformity, she cited *Randazzo*, which interpreted the following Zoning Ordinance language: **"No non-conforming building or structure may be enlarged or altered in a way that increases its nonconformity, except where the nonconforming setback** of a building or structure is not less than one-half (½) of the distance required by this Ordinance." In that case, the nonconformity was the side yard setback and building upwards did not **"increase the non-conformity"** since the increase in height did not exceed the 35-foot height restriction. Again, the Zoning Ordinance here does not condition requiring a variance solely on whether an expansion or alteration would increase the non-conformity. Instead, any alteration or expansion whatsoever always requires a variance with one limited exception (i.e., meeting the setbacks and not increasing the nonconformity), which Mr. Vanecek did not satisfy. However, even if the Zoning Ordinance did only require that the expansion would not increase the nonconformity, Mr. Vanecek's garage sidewall height now stands at 14 feet tall, and Section 1019(B)(5) of the Zoning Ordinance limits the sidewall height of such accessory structures to 12 feet tall. Therefore, even under *Randazzo*, Mr. Vanecek has increased the nonconformity by increasing the structures height. *See Pleasanton Twp. v. Parramore*, No. 317908, 2014 WL 7215204, at *5 (Mich. Ct. App. Dec. 18, 2014)

(explaining that “**The Zoning Board alone was authorized to grant variances and to impose conditions on variances . . . The Zoning Administrator could not exercise the authority vested in the Zoning Board.**”) (Emphasis added); and *Hughes v. Almena Twp.*, 284 Mich. App. 50, 78, 771 N.W.2d 453, 470 (2009) (“**everyone dealing with a municipality and its agents is charged with knowledge of the restrictive provisions of lawfully adopted ordinances.**”) (Emphasis added). Accordingly, we are appealing ZA Mehl’s first June 29 email interpretation and non-enforcement decision, as it is inconsistent with the plain language of the Zoning Ordinance, Michigan law, and the facts.

II. Email 2 (Exhibit 2)

We also believe ZA Mehl’s second June 29 email Zoning Ordinance interpretation and non-enforcement decision is inconsistent with the plain language of the Ordinance, Michigan law, and the facts. It appears that ZA Mehl’s site inspection of the property did not measure the upward expansion of Mr. Vanecek’s nonconforming garage. In ZA Mehl’s June 29 email, ZA Mehl stated that she verified the sidewall and setback of the addition:

The sidewalls were 9 [feet] tall and the expansion was 26 [feet] from the front parcel line. It was well within the side parcel line.

Although it is unclear where she took the measurements from, we simply do not have access to enough information to dispute that the addition is 9 feet tall and located 26 feet from the property line at this time.

However, we had indicated to ZA Mehl that we believe the upward expansion of Mr. Vanecek’s nonconforming garage, in particular, violated the Zoning Ordinance’s 12-foot height restriction for accessory buildings. During Fourth of July weekend in 2022, the distance of the upward expansion of Mr. Vanecek’s garage was measured using a laser measurer from the parcel line and the sidewall height of the nonconforming structure including the upward expansion. We determined that upward expansion was located just 18 inches from the property line and sidewall height at 14 feet tall at the shortest point. We have attached before and after images showing the scale of the upward and outward expansion as **Exhibit 5**. Section 1019(B)(5) of the Zoning Ordinance limits an accessory building’s sidewall height to no more than 12 feet. Notably, Mr. Vanecek’s garage’s 14-foot-tall sidewalls are well above the allotted 12-foot maximum sidewall height. Therefore, Mr. Vanecek’s structure required a variance and notice to my family regardless of ZA Mehl’s interpretation as to the above. Accordingly, we are also appealing ZA Mehl’s second June 29 email interpretation and non-enforcement decision, as it is inconsistent with the plain language of the Zoning Ordinance, Michigan law, and the facts.

III. Aggrieved Party

Finally, my family is entitled to appeal ZA Mehl’s June 29 Zoning Ordinance interpretation and non-enforcement decisions because ZA Mehl’s interpretation and non-enforcement decisions have uniquely harmed my family. Pursuant to the Zoning Ordinance, an “aggrieved party” may “[a]ppeal from the ruling of the Zoning Administrator concerning the enforcement, administration, and interpretation of this Ordinance, text and map “to the Board of Appeals.” Section 9606(A). My family has been uniquely harmed by ZA Mehl’s interpretation and non-enforcement decisions for reasons, including, but not limited to, those set forth in the list below.

- In May of 2022, my family requested ZA Mehl’s interpretation and enforcement of the Zoning Ordinance as required under its clear, unambiguous, well-defined language to protect my family and my family’s property from harm related to Mr. Vanecek’s unlawful expansion of his garage.

- My family previously opposed Mr. Vanecek's request to expand and alter his garage in a similar manner at the time he requested a variance, and the variance was denied. *See Exhibit 3 May 26, 2021 Onekama Township ZBA Meeting Minutes* (Onekama Township ZBA denying Mr. Vanecek's variance request and noting that Linda Ray and Jim Stokes sent a letter requesting that the ZBA deny the variance).³
- Mr. Vanecek's upward and outward expansion of his nonconforming garage only blocks my family's view of Portage Lake and only affects my family's property value.
- Mr. Vanecek's upward and outward expansion of his nonconforming garage 18 inches from the property line has increased the impervious surface at the parcel line; a recipe for runoff that will inevitably impact my family's nonconforming shed.
- Mr. Vanecek's upward and outward expansion of his nonconforming garage 18 inches from the parcel line presents a risk of collapsing and injuring persons/property along the parcel line, including my family's nonconforming shed.
- Mr. Vanecek uses the nonconforming garage, including the expansion, as a workshop and now stores junk in heaps outside of it. *See Exhibit 6 Image of Trash Heaps.*
- Mr. Vanecek's use of the nonconforming garage, including the expansion, as a workshop has also increased the amount of noise emanating from the border of our property.
- Mr. Vanecek's use of his nonconforming garage, including the expansion, as a workshop has increased traffic and foot traffic along the parcel line and has further reduced my family's privacy.
- Mr. Vanecek's use of the nonconforming garage, including the addition, as a workshop increases the likelihood of fire destroying our nonconforming due to its proximity.
- Mr. Vanecek has at least on one recent occasion brought heavy machinery onto his property in connection with the use of his nonconforming garage.

Consequently, my family has elected to exercise our right to appeal ZA Mehl's June 29 email interpretation and non-enforcement decisions to your Board, the Onekama Township ZBA, for the reasons set forth above.

RELIEF

In summary, my family respectfully requests that your Board, the Onekama Township ZBA, reverse ZA Mehl's: interpretation of Section 8003A and non-enforcement decision related to Mr. Vanecek's unlawful nonconforming garage for violating Section 8003A and Section 1019(B)(5). Finally, my family requests prompt notification when my family's appeal will be scheduled for a hearing. Should you require additional information regarding this appeal, please do not hesitate to let me know.

³ See May 26, 2021 Onekama Township ZBA Meeting Minutes, located at: https://www.onekama.info/files/ugd/111d5a_75bdaacbefc345de85b13676c3085159.pdf.

Thank you for your consideration in this matter.

Sincerely,

Matthew Stokes

ID rNH0AuMeXmnsdVqsWkVWEa8z

Matthew Stokes

EXHIBIT 1

KM Katie Mehl <kmehl@manisteecountymi.gov>

📧 📌 ↶ ↷ ➡ ⋮

To: Stokes, Matthew

Wed 6/29/2022 4:43 AM

I thank you for the information. I can see where you are coming from; although I stand by my interpretation that he is not increasing the non-conformity by adding height and the setback was a grandfathered, non-conforming legal setback for that structure. I will send you a formal letter detailing my determination and enforcement action on the fencing shortly. Things have been very busy this week, but I hope to have the letter to you before the weekend!

Thank you for your patience and let me know if you have any questions at this time.

Regards,

Katie Mehl
Planning and Zoning Administrator
Manistee County
(231) 398-3525
kmehl@manisteecountymi.gov



From: Stokes, Matthew <stokesm4@msu.edu>
Sent: Wednesday, June 22, 2022 10:56 PM
To: Katie Mehl <kmehl@manisteecountymi.gov>
Subject: Re: Scanned from a Xerox Multifunction Printer

[WARNING: External Message - Use extreme caution opening links or attachments]

EXHIBIT 2

 Katie Mehl <kmehl@manisteecountymi.gov>
To: Stokes, Matthew

Wed 6/29/2022 8:36 PM

Good Morning Matt,

I verified the height of the sidewalls as well as the setback of the addition. The sidewalls were ~9' tall and the expansion was 26' from the front parcel line. It was well within the side parcel line.

Katie Mehl
Planning and Zoning Administrator
Manistee County
(231) 398-3525
kmehl@manisteecountymi.gov



From: Stokes, Matthew <stokesm4@msu.edu>
Sent: Tuesday, June 28, 2022 7:54 PM
To: Katie Mehl <kmehl@manisteecountymi.gov>
Subject: Re: Scanned from a Xerox Multifunction Printer

[WARNING: External Message - Use extreme caution opening links or attachments]

...

EXHIBIT 3

**Onkama Township Zoning Board of Appeals
May 26, 2021
Minutes of Special Meeting/Public Hearing**

Subject: Variance Request

David and Paula Vanecek

8793 Portage Point Drive, Onkama, Michigan 49675

Parcel: #51-11-370-103-00

- I. Call to Order by Acting Vice Chair Jim Pomaranski at 6pm.**
- II. Pledge of Allegiance**
- III. Roll Call/ Purpose of the Meeting**
Acting Chair – Jim Pomaranski
Secretary – Judy Spohn,
Alternate – Dave Wallace

Acting Chair Jim Pomaranski states the purpose of this hearing is that Applicant (David Vanecek) is seeking a variance from the Onkama Township Zoning Ordinance from a 25' rear yard setback to a 5' rear setback. This would allow the applicant to place an addition on their existing garage, creating a 25' x 45' or 1,125 sq. ft. structure within the rear yard setback.

- IV. Approval of Agenda**
Motion was made by Dave Wallace to approve the agenda, 2nd by Judy Spohn.
Motion passed with 3 ayes.
- V. Approval of Minutes**
No unapproved minutes of previous meetings are outstanding.
- VI. Public Comment on Agenda Related Items**
No comments made.
- VII. Public Hearing – 605pm**
 - 1. Secretary Judy Spohn read a letter from Linda Ray and Jim Stokes not to approve the variance. (See attachment #1).**

David Vanecek – Went from a summer to full time resident in 2017. States the garage is too small, not weather tight. States the cottage was built in 1916. Has a utility pole in an open area of his property. He would like to maintain the structure; fix it, add an addition to it. Has had Consumers Energy out x 2. Has 5 other cottages feeding off this pole. He states that his power is underground. Jeff Kelly (Consumers Energy) states he would need to cut down the trees, if relocating pole. Cost would be \$10-15,000 and he would need to get easements from the neighbors. Some of the neighbors would not agree to easements. States his only option is to go to the East. Would like to integrate the old garage with the new. States has rain water in his garage from the neighbors.

Jim Pomaranski – There are options, you could relocate septic field, rework the plumbing, maintain structure.

Katie Mehl – (Zoning Administator) showed the zoning board pictures of the garage. If variance is granted, it would be additional 700 sq. ft.

Dave Wallace – An option from the neighbor, move the garage, which would then be a loss of lawn.

Winnie Baker - (neighbor) States Ray's are good neighbors. They tried to fix the run off from the neighbor's garage.

The Public Hearing was closed at 630pm.

VIII. Business Session

Action on Pending Cases – David Vanecek Variance

A. Review of "Findings of Fact" Bearing on the Variance Request:

As to the variance requested above, the Zoning Board of Appeals considered the standards for variance contained in Section 9603 of the Onekama Township Zoning Ordinance and found:

- 1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district. Yes, because of the utility pole is not a hardship shared by the neighbors. (Per Judy Spohn & Dave Wallace).**
- 2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Ordinance.**

No. Per Dave Wallace. Per Judy Spohn – The parcels are generally consistent with others. All share the same zoning restrictions.

3. That special conditions and circumstances do not result from the actions of the applicant. **Yes** – the utility pole per Judy Spohn.

4. That granting the variance will not alter the essential character of the area. **Yes.** Per Dave Wallace – the area is old, before any zoning ordinances were put in place. This is an area of small cottages. Per Judy Spohn – **Yes & No.** Approving the variance would be 45' long; that is a pretty big appearance present.

Consensus was reached. **Yes**

5. That no nonconforming use of neighboring lands, structures, or buildings, in the same district, and no permitted use of lands, structures or building in other districts shall be considered grounds for the issuance of a variance. **Yes**

B. The Board of Appeals shall make findings that the requirements of this Ordinance have been met by the applicant for a variance.

Not applicable.

C. The Board of Appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

The Board made a finding that variance is **NOT** the minimum variance that will make possible the reasonable use of the land. In fact, the applicant has several different sizing options that would not need a variance request. These options were discussed.

D. The Board of Appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of the Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

The Board discussed the proposed structure, being 45' x 24' wide, would not be in harmony within the neighborhood and fell short of meeting "the intent of the Ordinance" ensuring that it would **NOT** be injurious to the neighborhood and that substantial justice is secured. The concept of substantial justice raises the issue of "fairness" to the immediate neighbors and the community.

- E. In granting any variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance and including requirements for buffering between uses by landscaping, fencing, vegetation or similar methods. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 9803 of this Ordinance.

Not applicable

- F. Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

The variance request was for "non-use" or dimensional/area variance only.

Decision Determination

Following the "Finding the Facts – Justification, the ZBA members conducted a discussion around the aforementioned findings.

Chairman Pomaranski requested a motion to be made.

- Motion by Dave Wallace to DENY the variance to the results of the "Finding of Facts Justification". More specifically the applicant DID NOT demonstrate the following;
 1. That the variance is the minimum variance that will make possible the reasonable use of the land.
 2. That the addition to an already nonconforming structure would NOT be injurious to the neighborhood and that substantial justice has been served.

- **Motion seconded by Secretary Judy Spohn**
- **Chairmen asked for further discussion – None**
- **Chairmen restated motion on the table.**
- **Roll Call Vote**

Acting Chair Jim Pomaranski - Yes
Secretary Judy Spohn - Yes
Alternate Dave Wallace -Yes

Motion to disapprove carried 3 (tally)

Old Business

Reminder that on Friday, May 28, 2021 meeting at the Township Hall to approve the minutes of today's hearing/meeting.

The continuing of the Cook Hearing on June 3, 2021, 6pm

Dave Wallace will be the alternate for Jim Trout as Jim will be unable to participate due to health reasons.

Cook Hearing will be:

Acting Chair – Jim Pomaranski

Secretary – Judy Spohn

Alternate – Dave Wallace

Other Business of the Board of Appeals - None.

Misc. Nothing

IX. Public Comments and Communications

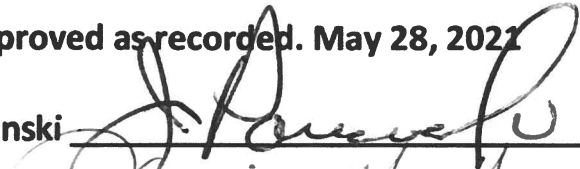
Winnie Baker (neighbor) you have rules, to follow the rules, not to break the rules.
Katie Mehl – If there is an increase of variances, then the ordinances may need to be adjusted.

X. Adjournment – Made at 7pm by Jim Pomaranski

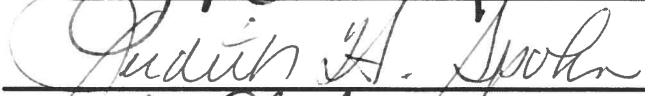
Recorded by Pat Pomaranski.

Minutes approved as recorded. May 28, 2021

Jim Pomaranski

 6/3/21

Judy Spohn

 6/3/21

Dave Wallace

 6/3/2021

EXHIBIT 4

e-Journal Summary

e-Journal Number :74192

Opinion Date :11/12/2020

e-Journal Date :11/25/2020

Court :Michigan Court of Appeals

Case Name :Randazzo v. Lake Twp.

Practice Area(s) :Municipal, Zoning

Judge(s) :Per Curiam - Boonstra, Cavanagh, and Borrello

Full Text Opinion

Issues:

Zoning; § 1310 (extensions of nonconforming buildings) of defendant-township's Zoning Ordinance; Ordinance interpretation; *Ballman v. Borges*; *Sau-Tuk Indus., Inc. v. Allegan Cnty.*; "Enlarge" or "alter"; "Setback" requirement; §§ 705.2(A) & 202; Consideration of the "harmony" of the area rather than merely interpreting the ordinance language; § 705.4(A) (requiring site plan review consider existing structures on adjacent properties in order to maintain harmony)

Summary

Concluding that the trial court did not err when it held that the ZBA misinterpreted § 1310 of the Zoning Ordinance and reversed the ZBA's decision, the court affirmed. Defendant-Township argued that the trial court erred when it interpreted the plain language of § 1310 and reversed the ZBA's denial of appellees' request for a variance. The nonconformity was the setback requirement. It was "undisputed that the residence is an existing nonconforming building with respect to its setback, being set back only 8.3 feet from the road." The Township argued that it was the "intent of the drafters of § 1310 to 'prohibit any expansion or alteration of a nonconforming structure with less than ½ of the required setback distance.' However, the plain language of the ordinance provides that

“[n]onconforming building or structure may be enlarged or altered in a way that *increases* its nonconformity.” The court noted that when “the words used in a statute or an ordinance are clear and unambiguous, they express the intent of the legislative body and must be enforced as written.” Here, the court held that “the ZBA’s interpretation of § 1310 was contrary to the unambiguous language of § 1310. The proposed improvements to the property would not further decrease the setback, or, in other terms, enlarge or alter the nonconformity of the setback. Moreover, because the Township has elected not to challenge the trial court’s findings concerning the height requirement, there is no basis for concluding that the proposed improvements would result in a vertical nonconformity by exceeding the height requirement of § 705.4.” Thus, the ZBA’s finding were “not supported by competent, material, and substantial evidence because there was no evidence that any nonconformity would be enlarged or altered; in simple terms, the building would be just as nonconforming after the improvements as it was before.”

[Full Text Opinion](#)

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2020 WL 7296982

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Gaspar RANDAZZO and Nicole Randazzo,
Appellees,
v.
LAKE TOWNSHIP, Appellant.

No. 348559
|
December 10, 2020

Huron Circuit Court, LC No. 18-105562-AA

Before: Boonstra, P.J., and Cavanagh and Borrello, JJ.

Opinion

Per Curiam.

*1 Appellant, Lake Township (the Township), appeals by leave granted¹ the trial court's order reversing the decision of the Lake Township Zoning Board of Appeals (ZBA) denying a variance request of appellees, Gaspar and Nicole Randazzo. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Appellees filed with the Township a Land Use Permit Application for an addition to their single-family residence located on Port Austin Road in Caseville, Michigan. On February 14, 2018, the Township's Zoning Administrator denied appellees' permit application based on two purported violations of the Zoning Ordinance: § 1310 (Extensions of Nonconforming Buildings) and § 705.4(A) (Maximum Building Height).

On February 28, 2018, appellees filed an Application for Appeal, Variance or Exception with the ZBA. Appellees attached a letter with their application in which they stated that the proposed improvement to the house would

add an additional level that would include a master bedroom, bathroom, and closet. The ZBA held a public hearing regarding appellees' appeal and variance request. At the hearing, appellees pointed out that the current structure had a preexisting nonconformity regarding the setback requirements because it was only 8.3 feet away from the road, and argued that the proposed improvements would not increase the nonconformity of the home under § 1310 of the Zoning Ordinance. Appellees also argued that the proposed improvements would not violate § 705.4 of the Zoning Ordinance because the highest point of the building after improvement would be only 23 feet.²

The ZBA denied appellees' appeal, stating that an "[a]dditional story going straight up from existing nonconforming roadside is considered increasing the nonconformity. Current ordinance does not allow third story in R-1."³ The ZBA did not address the variance standards, which are set forth in § 303.7(B) of the Zoning Ordinance, either on the record or in its decision.



Appellees appealed the ZBA's decision to the trial court on July 24, 2018, arguing that the ZBA had misinterpreted and misapplied the Zoning Ordinance. Appellees argued that the ZBA had erred when it denied their appeal because the proposed improvements complied with § 705.4 of the Zoning Ordinance and did not increase the structure's legal nonconformity based on the setback from the road. The Township argued that the ZBA had correctly applied the Zoning Ordinance therefore had properly denied the variance request. The trial court entered an order reversing the ZBA's decision and granting appellees' variance request. The court concluded that the ZBA's denial did not comply with the Zoning Ordinance because the ZBA has misinterpreted § 704.5 of the Zoning Ordinance to prohibit a third story regardless of whether the total height limit was exceeded. The trial court also concluded that the ZBA erred when it interpreted and applied § 1310 of the Zoning Ordinance because the proposed project did not further encroach on the nonconforming setback.

*2 This appeal followed. On appeal, the Township expressly does not challenge the trial court's interpretation of § 704.5 or its conclusion that the proposed improvements do not violate that section of the Zoning Ordinance; rather, it argues only that the trial court erred in its interpretation and application of § 1310.

II. STANDARD OF REVIEW

Under MCL 125.3606(1), the trial court was required to review the ZBA's decision to determine, based on the ZBA record, whether the decision (a) complied with the constitution and laws of the state, (b) was based upon proper procedure, (c) was supported by competent, material, and substantial evidence on the record, and (d) represented the reasonable exercise of discretion granted by law to the zoning board of appeals.

"Substantial evidence" is evidence that a reasonable person would accept as sufficient to support a conclusion. While this requires more than a scintilla of evidence, it may be substantially less than a preponderance. Under the substantial-evidence test, the circuit court's review is not de novo and the court is not permitted to draw its own conclusions from the evidence presented to the administrative body. Courts must give deference to an agency's findings of fact. When there is substantial evidence, a reviewing court must not substitute its discretion for that of the administrative tribunal even if the court might have reached a different result. A court may not set aside findings merely because alternative findings also could have been supported by substantial evidence on the record. [*Edw. C. Levy Co. v. Marine City Zoning Bd. of Appeals*, 293 Mich. App. 333, 340-341; 810 N.W.2d 621 (2011) (quotation marks and citation omitted).]

A circuit court's decision in an appeal from a decision of a zoning board of appeals is reviewed "de novo to determine whether the circuit court applied the correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the [ZBA's] factual findings."  *Olsen v. Chikaming Twp.*, 325 Mich. App. 170, 180; 924 N.W.2d 889 (2018) (alteration in original, quotation marks and citation omitted). We review for clear error the circuit court's factual findings in determining whether the circuit court correctly applied the substantial evidence test.  *Hughes v. Almena Twp.*, 284

Mich. App. 50, 60; 771 N.W.2d 453 (2009). "A finding is clearly erroneous if the reviewing court, on the whole record, is left with the definite and firm conviction that a mistake has been made." *Id.*

We review de novo issues involving the construction of statutes and ordinances. *Id.*

III. ANALYSIS

The Township argues that the trial court erred when it interpreted the plain language of § 1310 of the Zoning Ordinance and reversed the ZBA's denial of the variance. We disagree.

The rules applicable to statutory construction apply to the construction of ordinances as well. The primary goal of statutory interpretation and, by implication, the interpretation of ordinances, is to give effect to the intent of the legislative body. The first criterion in determining intent is the specific language used by the legislative body in the statute or ordinance. If the plain and ordinary language is clear, then judicial construction is normally neither necessary nor permitted. However, the court may refer to dictionary definitions when appropriate when ascertaining the precise meaning of a particular term. [*Ballman v. Borges*, 226 Mich. App. 166, 167-168; 572 N.W.2d 47 (1997).]

*3 "When the words used in a statute or an ordinance are clear and unambiguous, they express the intent of the legislative body and must be enforced as written." *Sau-Tuk Indus., Inc. v. Allegan Co.*, 316 Mich. App. 122, 137; 892 N.W.2d 33 (2016).

Section 1310 of the Zoning Ordinance provides:

No non-conforming building or structure may be enlarged or

altered in a way that increases its nonconformity, except where the nonconforming setback of a building or structure is not less than one-half ($\frac{1}{2}$) of the distance required by this Ordinance. In such case, the nonconforming setback may be extended along the same plane up to fifteen (15') feet in length. In no case shall the setback be further reduced. Only one nonconforming extension of up to fifteen (15') feet is permitted. [Emphasis added.]

The Zoning Ordinance defines a “non-conforming building” as “[a] building or portion thereof lawfully existing at the effective date of this zoning ordinance, or amendments thereto, and which does not conform to the provisions (e.g., setbacks, height, lot coverage, parking) of this zoning ordinance in the zoning district in which it is located.” See Zoning Ordinance, § 202. The Zoning Ordinance does not define “enlarge” or “alter.” *Merriam-Webster’s Collegiate Dictionary* (11th ed.) defines “enlarge” as “to make larger.” *Merriam-Webster’s Collegiate Dictionary* (11th ed.) defines “alter” as “to make different without changing into something else.”

The nonconformity at issue in this appeal is the setback requirement of the building. Section 705.2(A) requires that “[e]ach front yard shall be a minimum of twenty-five (25’) feet from road right-of-way.” Zoning Ordinance, § 705.2(A). The Zoning Ordinance defines “setback” as “[t]he minimum horizontal distance required to exist between a structure (overhangs) and the property lines.” Zoning Ordinance, § 202. It is undisputed that the residence is an existing nonconforming building with respect to its setback, being set back only 8.3 feet from the road.

The Township argues that it was intent of the drafters of § 1310 to “prohibit any expansion or alteration of a nonconforming structure with less than $\frac{1}{2}$ of the required setback distance.” However, the plain language of the ordinance provides that “[n]o conforming building or structure may be enlarged or altered in a way that increases its nonconformity.” Zoning Ordinance, § 1310 (emphasis added). “When the words used in a statute or an ordinance are clear and unambiguous, they express the intent of the legislative body and must be enforced as written.” *Sau-Tuk Indus., Inc.*, 316 Mich. App. at 137. In this case, the ZBA’s interpretation of § 1310 was contrary to the unambiguous language of § 1310.

The proposed improvements to the property would not further decrease the setback, or, in other terms, increase the nonconformity of the setback. Moreover, because the Township has elected not to challenge the trial court’s findings concerning the height requirement, there is no basis for concluding that the proposed improvements would result in a vertical nonconformity by exceeding the height requirement of § 705.4. The ZBA’s finding was therefore not supported by competent, material, and substantial evidence because there was no evidence that any nonconformity would be increased; in simple terms, the building would be just as nonconforming after the improvements as it was before. Although the Township argues that the proposed improvement would result in “more of the building being located within the nonconforming setback(s),” they have not provided any authority for the proposition that this constitutes an increase of the nonconformity *itself*. As noted, the trial court determined that the vertical expansion would not violate the height requirements of the Zoning Ordinance, and the Township has not appealed that decision. Moreover, the structure will fail to conform to the setback requirements in exactly the same way both before and after the improvements; there is nothing in the language of the ordinances governing or defining setbacks that addresses height or total square footage of a building within an encroachment. See Zoning Ordinance, §§ 705.2(A), 202. Therefore, the trial court did not err when it determined that the ZBA misinterpreted § 1310 and reversed the ZBA’s decision.

*4 The Township also argues that the trial court erred because, in its decision, it considered the “harmony” of the area rather than merely interpreting the language of the relevant ordinances. We find this argument unpersuasive. While the trial court mentioned “harmony,” its decision was based on the language of the ordinance itself. Notably, § 705.4(A) of the Zoning Ordinance specifically states that “site plan review will take into consideration existing structures on adjacent properties in order to maintain harmony.” Zoning Ordinance, § 705.4, 7-5. The Township also complains that the trial court based its decision on photographs attached to appellees’ brief below; however, the record does not indicate that the trial court relied on the photographs. In any event, the trial court’s interpretation was well-grounded in the plain language of the ordinances at issue.

We note that the ZBA and the trial court refer to appellees’ appeal of the denial of the land use permit as a request for a variance; however, a variance request is not required when the project complies with the Zoning Ordinance. See Zoning Ordinance, § 307 (stating that a

land use permit will not be issued “unless the request is in conformance with the provisions of [the Zoning] Ordinance or amendment adopted from time to time after the effective date of this Ordinance.”). Although the trial court employed the terminology of reversing the ZBA’s denial of appellees’ “variance request” and of granting appellees “variance request,” the trial court actually held that the ZBA’s stated reasons for denying appellees’ application for a land use permit were erroneous. With that clarification, we affirm the trial court’s interpretation

and application of the Zoning Ordinance.

Affirmed.

All Citations

Not Reported in N.W. Rptr., 2020 WL 7296982

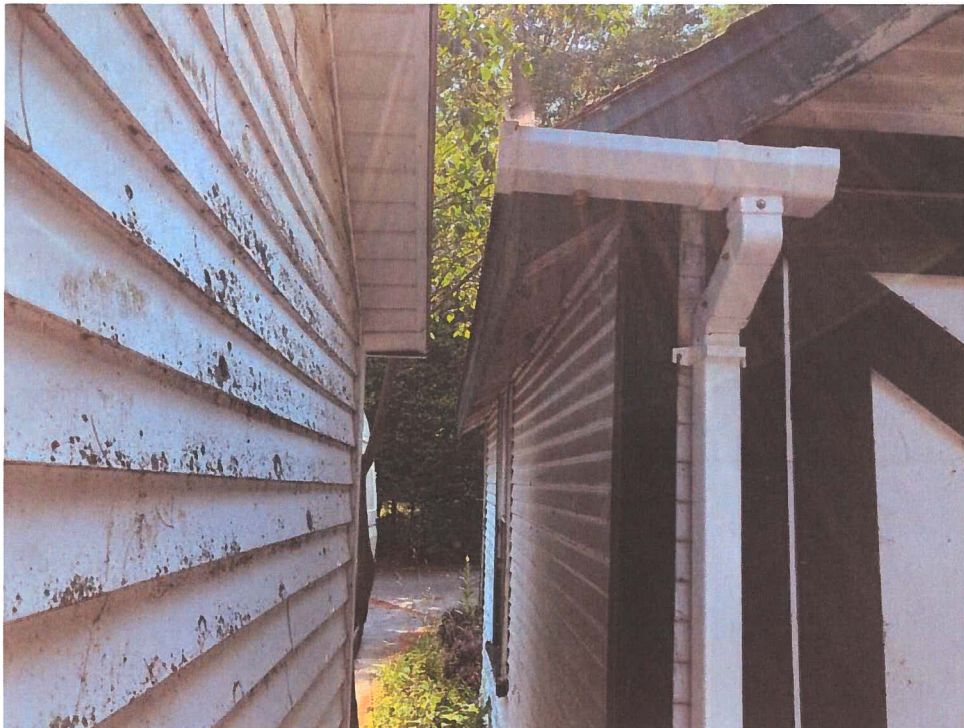
Footnotes

- ¹ *Randazzo v. Lake Township*, unpublished order of the Court of Appeals, entered August 30, 2019 (No. 348559).
- ² § 705.4 of the Zoning Ordinance sets the maximum building height of a residential unit as “thirty-five feet (35’) or two (2) stories in height above the average grade of adjacent properties.”
- ³ The record reflects that the parties have disagreed about whether the proposed addition would be that of a second story or a third story. Appellees describe the home (pre-addition) as a “one-story ranch with a walk-out basement.” As we will describe, however, that issue is not before us on appeal.

EXHIBIT 5



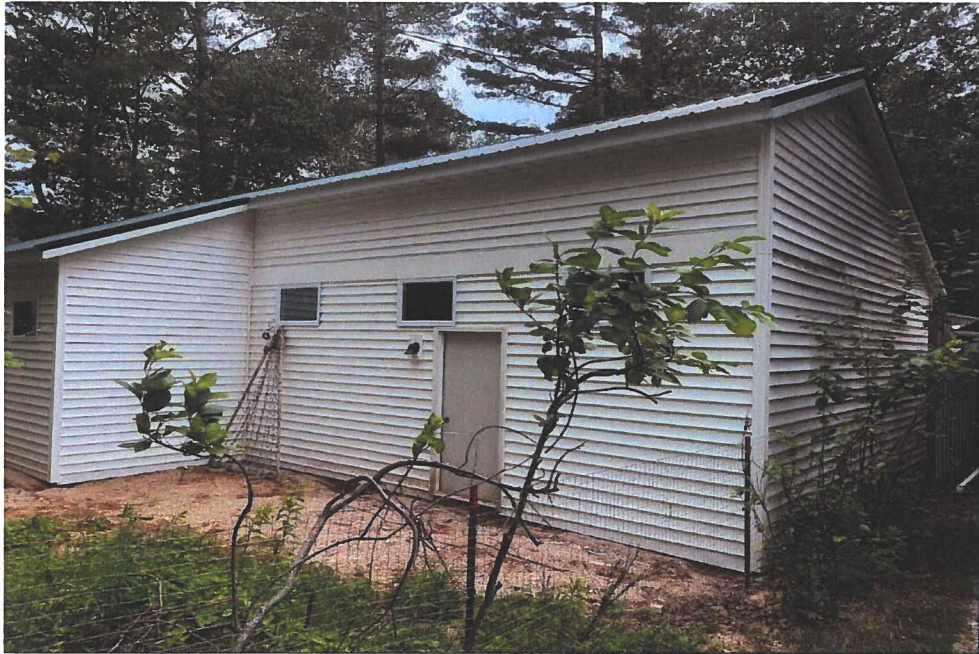
This image was taken in 2021. It is an image taken before the upward and outward expansion and shows the proximity between our structures: Mr. Vanecek's nonconforming garage to the left and my family's nonconforming shed to the right.



This image was taken in 2021. It is an image taken before the upward and outward expansion and shows the proximity between our structures: Mr. Vanecek's nonconforming garage to the left and my family's nonconforming shed to the right.



This image was taken in July 2022 and shows the sheer scale of Mr. Vanecek's garage expansion of the property line. **Mr. Vanecek's garage expansion involved increasing the height of the nonconforming garage (windows and above) and an addition next to the pre-existing structure (with the green roof).**



This image was taken in July 2022 and shows the sheer scale of Mr. Vanecek's garage expansion of the property line. **Mr. Vanecek's garage expansion involved increasing the height of the nonconforming garage (windows and above) and an addition next to the pre-existing structure (with the green roof).**

EXHIBIT 6



This image was taken in July of 2022 and shows Mr. Vanecek's expanded garage to the left, my family's nonconforming shed in the center, and Mr. Vanecek's junk pile to the right.



This image was taken in July of 2022 and shows Mr. Vanecek's junk pile to the right.

Supplemental Appeal Provided
by Applicant

September 8, 2022

Attention: Katie Mehl,
Zoning Administrator
Onkama Township
5435 Main Street, PO 458,
Onkama, Michigan 49675 231-398-3525

Onkama Township
Zoning Board of Appeals
395 Third Street, Manistee,
Michigan 49660

Dear Onkama Township Zoning Board of Appeals:

We are submitting this letter to supplement our appeal of ZA Mehl's June 28, 2022 email enforcement and interpretation decisions and her August 4, 2022 supplemental response.

1. ZA Mehl suggests that Mr. Vanecek's upward and outward non-conforming garage expansion, which sits mere inches from the property line, met the R-3 District's 25-foot rear yard setback requirement simply because the building was nonconforming due to the rear yard setback. That is simply not the case.

A "nonconforming structure" is a structure that pre-dates Onkama Township's adoption of the Onkama Township Zoning Ordinance ("Zoning Ordinance") and thus does not conform to the Ordinance requirements in some way (e.g., setbacks, square footage, height, etc.). *See* Section 503 Nonconforming Structure, Defined ("NONCONFORMING BUILDING OR STRUCTURE means a building or structure or portion thereof lawfully existing at the effective date of this Ordinance, or any amendments thereto, and which does not conform to the provisions of this Ordinance in the district in which it is located.") and MCL 125.3208. Michigan law and the Zoning Ordinance alike allow "nonconforming structures" to continue to exist in recognition of the fact that a landowner who had erected a structure before the Zoning Ordinance was adopted could not have possibly known how to comply with the future Ordinance requirements.

However, landowners who seek to "expand or alter" a nonconforming structure post-Zoning Ordinance adoption are then subject to the Ordinance requirements like everyone else. Here, the plain language of the Zoning Ordinance expressly recognizes that reality and requires a landowner's expansion or alteration of a nonconforming structure to: (a) comply with the setbacks and (b) not increase the nonconformity. *See* Section 8003A; Section 503 Setback, Defined.

Because Mr. Vanecek's garage was nonconforming due to the rear yard setbacks, his upward expansion on top of the original garage clearly does not meet the setbacks and hence violates the Zoning Ordinance since no variance was issued. *See* July 25, 2022 Appeal for more details. To hold otherwise, would be to ignore the plain language of the Zoning Ordinance, which clearly defines setbacks, and blatantly ignore the public policy against the expansion of nonconforming structures.

We recognize that mistakes happen. The Onkama Township Zoning Board of Appeals ("ZBA")'s duty is not to insulate the ZA when she makes a mistake. Rather, the ZBA's duty is to apply the

plain language of the Zoning Ordinance and correct such mistakes when they are inevitably made. Your Board correctly applied the Zoning Ordinance to prevent Mr. Vanecek's nonconforming expansion in 2021. Accordingly, we respectfully request that you interpret the Zoning Ordinance as written and enforce the setback requirements.

2. We further maintain that Mr. Vanecek unlawfully expanded the nonconforming garage upwards in violation of the Zoning Ordinance by increasing the sidewall height nearly 7 feet to a standing height of between 14 (from bottom to eaves) and 16 feet (from bottom to peak) tall. *See* July 25, 2022 Appeal for more details; *see also* Section 1019(B)(5) While ZA Mehl's August 4, 2022 supplemental response alleges that the sidewall is "about 12 feet from the roof to the eaves," the Zoning Ordinance does not permit approximations. Even if the Zoning Ordinance did permit approximations, the actual height of the sidewall standing at 14 feet tall as opposed to the Zoning Ordinance's 12-foot sidewall requirement (i.e., a 2-foot deviation) is far more than a clerical rounding error. As such, ZA Mehl did not have the authority to issue the Land Use Permit ("LUP") (which the expansion and addition did not even comply with to begin with) for Mr. Vanecek's garage expansion.
3. Following our initial request for appeal, we noted to ZA Mehl that Mr. Vanecek had continued to unlawfully expand the footprint of the nonconforming garage structure (potentially even violating the square footage requirements) in violation of the Zoning Ordinance. *See* attached August 7-8 Correspondence with ZA Mehl. It appears that Mr. Vanecek improperly poured a concrete slab abutting the nonconforming garage to create an unenclosed porch structure, just inches from the line, also in violation of the R-3 District's rear yard setback requirement and would have required a variance even under her interpretation. Section 4203; Section 503 Setback, Defined ("SETBACK means the minimum horizontal distance, measured toward the center of a parcel from the property lines, waterfront line, road right-of-way or road easement in which no portion of a building, **including any steps, eaves, decks or unenclosed porches may be erected or permanently maintained**). As we noted in our correspondence to ZA Mehl, the continued expansion is clearly part of the building even under ZA Mehl's interpretation and should be removed. Frankly, we feel Mr. Vanecek has shown utter disregard to the Township ZBA's previous determination, the Zoning Ordinance, and the LUP that ZA Mehl, herself, granted. Yet, ZA Mehl now alleges that Mr. Vanecek's expansion complied with the Zoning Ordinance but did not define what the structure was.

In summary, we respectfully request that the Onekama Township ZBA reverse Ms. Mehl's interpretation and non-enforcement decisions.

Respectfully,

Matt Stokes

September 8, 2022

Attention: Katie Mehl,
Zoning Administrator
Onkama Township
5435 Main Street, PO 458,
Onkama, Michigan 49675 231-398-3525

Onkama Township
Zoning Board of Appeals
395 Third Street, Manistee,
Michigan 49660

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However, landowners who seek to "expand or alter" a nonconforming structure post-Zoning Ordinance adoption are then subject to the Ordinance requirements like everyone else. Here, the plain language of the Zoning Ordinance expressly recognizes that reality and requires a landowner's expansion or alteration of a nonconforming structure to: (a) comply with the setbacks and (b) not increase the nonconformity. *See* Section 8003A; Section 503 Setback, Defined.

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In summary, we respectfully request that the Onekama Township ZBA reverse Ms. Mehl's interpretation and non-enforcement decisions.

Respectfully,

Matt Stokes

From: Katie Mehl <kmehl@manisteecountymi.gov>
Sent: Thursday, August 4, 2022 11:20 AM
To: Stokes, Matthew <stokesm4@msu.edu>
Subject: ZBA Appeal

Hi Matt,

Please find attached a letter from the Township Attorney and a letter from myself (one PDF) regarding your appeal. Let me know if you have any questions or concerns.

Regards,

Katie Mehl
Planning and Zoning Administrator
Manistee County
(231) 398-3525
kmehl@manisteecountymi.gov



Received. We will respond in full once we have time to get everyone together and review your letter.

In the meantime, we would like to verify that a stop work order has been issued under 9606D of the Zoning Ordinance. We noted that there had been an apparent expansion of the footprint of the structure in violation of the Zoning Ordinance since we filed the appeal.

In particular, it appears that Mr. Vanecek has improperly poured concrete slabs onto the non-conforming garage structure, just feet from the line, in violation of the setback requirement and thus the variance requirements even under your apparent interpretation. See 503 Setbecak, Defined ("SETBACK means the minimum horizontal distance, measured toward the center of a parcel from the property lines, waterfront line, road right-of-way or road easement **in which no portion of a building, including any steps, eaves, decks or unenclosed porches may be erected or permanently maintained**). This expansion is clearly part of the building even under your interpretation and should be removed. Frankly, we feel Mr. Vanecek has utterly disregarded the ZBA determination and the Township Zoning Ordinance.

Kindly confirm whether the poured concrete was approved and if so, the interpretation of the zoning ordinance that allowed it. Alternatively, please confirm whether you intend to enforce the Zoning Ordinance against this additional unlawful expansion if it was not approved.

Sincerely,

Matt Stokes



From: Katie Mehl <kmehl@manisteecountymi.gov>
Subject: RE: ZBA Appeal
Date: August 8, 2022 at 9:01:52 AM EDT
To: "Stokes, Matthew" <stokesm4@msu.edu>

Hi Matt,

At-grade structures do not require a land use permit.

1031. Sidewalks, Patios, Driveways:

- A. Sidewalks, patios, driveways and similar items constructed at grade are not considered accessory structures. This section does not exempt any parcel owner, tenant, or agent from any Permit requirement other agencies or authorities may mandate.

The permit expires in eight days; I was under the impression construction was complete but will place a stop work order for any remaining construction.

Regards,

Katie Mehl
Planning and Zoning Administrator
Manistee County
(231) 398-3525
kmehl@manisteecountymi.gov



From: Stokes, Matthew <stokesm4@msu.edu>
Sent: Sunday, August 7, 2022 7:33 PM
To: Katie Mehl <kmehl@manisteecountymi.gov>
Subject: Re: ZBA Appeal

[WARNING: External Message - Use extreme caution opening links or attachments]

Hi Katie,



PLANNING DEPARTMENT
(231) 723-6041
Fax (231) 398-3526
planning@manisteecountymi.gov

Manistee County Planning Building, 395 Third Street Manistee, Michigan 49660

Land Use Permit (Onkama Township)

Special Conditions: This permit is for a 12' x 32' or 382 sq. ft. addition on an existing 25' x 17' nonconforming garage. The addition is within the required setbacks for the district. Building Permit is required prior to construction. Portion of parcel appears to be in Flood Zone AE with construction site located in Flood Zone X. This permit does not negate the need for any local, state, federal or other required permits.

Permit Number: 24-2021
Date: 8/18/2021
Parcel Number: 51-11-370-103-00
Section Number: 28
Address: 8793 Portage Point Drive
Onkama, MI 49675

Issued to Property Owner: Dave Vanecek ☒ Fee Paid: \$250.00

Land Use Allowed: Permitted Use

Size of Building or Structure: 810 sq. ft. total footprint

Zoning Classification: RR-3

Minimum Land Area Requirement: 15,000 sq. ft.

Size of Existing Parcel: 20,020 sq. ft.

Flood Zone: ☒ Flood Zone Class AE / X Wetland Area: ☐

Minimum Setbacks (from eaves or greatest overhang):

	Required	Actual
Front Yard*	25'	30'
Side Yard*	10'	E 32'
Rear Yard*	25'	138'
Maximum Structure Height**	35'	<35'
Maximum Accessory Sidewall Height	12'	8'
Minimum distance from other buildings (from eave or greatest overhang)	10'	>10'

*Property Line

**Building Height is the vertical distance measured from the average existing grade at the building site to the highest part of the roof (Article 5): "No dwelling or part thereof shall be erected or altered to a height exceeding two and one-half stories or 35 feet, whichever is less." Article 10.

***This permit doesn't take into account HOA or Condominium Association requirements, please check to see if you are included within one of these associations prior to building. This is not a stipulation and the Township does not enforce HOA or Condominium Association requirements.

Expiration of this Land Use Permit: 8/18/2022

Other Comments Concerning Property:

Attachments:

Authorized Signature of Z.A. Katie Mehl 8/18/2021

Letter From Township Attorney
and Opinion from Zoning Administrator (ZA) on
Interpretation and Non-Enforcement Action



THE
RUNNING WISE
LAW FIRM
FORD • CONLON • GERBERDING • GRIER

August 4, 2022

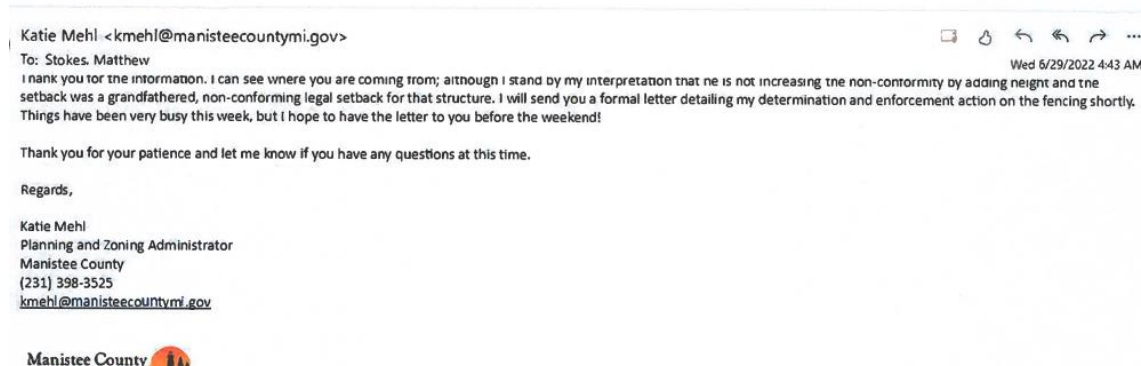
Matthew Stokes

Attorney for:
Linda Ray
1896 Paloma Court
Lafayette, IN 47909
and
James R. Stokes
3621 Passion Drive
Alva, FL 33920

RE: Appeal of Onekama Township Zoning Administrator Decision
Parcel No. 51-11-370-103-00
8793 Portage Point Drive, Onekama, MI 49675

Dear Mr. Stokes.

I am an attorney representing Onekama Township. The Township Zoning Administrator (“ZA”) Katie Mehl asked me to review your concerns with respect to the land use permit (“LUP”) issued for the garage expansion located at the Vanacek property, 8793 Portage Point Drive. These concerns were discussed in Katie’s email, dated June 29, 2022 inserted below:



As the June 29, 2022 email indicated, Katie intended to “send you a formal letter detailing” her “determination”. That letter would have constituted her formal opinion on this matter. I agreed to assist Katie with that opinion. Because of conflicts in my schedule, however, I was not able to assist Katie to draft that opinion, and the opinion was delayed and

Kent E. Gerberding
Michael I. Conlon
Catherine D. Jasinski
Thomas A. Grier
Julie A. Gillum
Jeffrey R. Wingfield
Thomas J. Waters

Of Counsel:
Richard W. Ford
John W. Kline

Harry T. Running
(1911 – 1992)
William L. Wise
(1928 – 2014)

Miles C. Gerberding
(1930 – 2015)

Traverse City
1501 Cass Street, Suite D
PO Box 686
Traverse City, MI
49685-0686
Ph. 231.946.2700
Fax. 231.946.0857

was not released, before you filed your appeal on July 25, 2022 (which focused on the June 29, 2022 email).

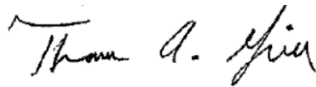
Katie's opinion has now been completed. It is attached to this letter and should be considered the formal opinion with respect to the questions about the LUP for the garage located on property at 8793 Portage Point Drive as mentioned in Katie's June 29, 2022 email.

Your prior appeal was timely filed under the 30-day requirement of Section 9606 A. of the Onekama Township Zoning Ordinance ("ZO") and you need not file a separate appeal of the findings in Katie's formal opinion, but Katie's opinion will be presented to the Zoning Board of Appeals ("ZBA") for its deliberation and you are certainly welcome to offer further comment about the findings in this opinion.

To provide you with a further opportunity to address Katie's opinion, the ZBA will be instructed not to schedule its public hearing on this matter for at least another 30 days.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Thomas A. Grier". The signature is written in a cursive, flowing style.

Thomas A. Grier



Manistee County Planning Building, 395 Third Street Manistee, Michigan 49660

August 4, 2022

To: Matthew Stokes
stokesm4@msu.edu
(734) 546-8604

Re: Enforcement Determination

Dear Mr. Stokes,

This letter is in follow up to my email of June 29, 2022 where I indicated that would be preparing a formal letter detailing my determinations about several structures at Parcel ID # 51-11-370-103-00 with an address of 8793 Portage Point Drive.

There were two issues involved: The first matter pertains to the fencing at the property line. The second matter pertains to the land use permit that was issued for expansion of a grandfathered, non-conforming garage.

Fencing

One complaint regards the fencing installed on the rear (northern) parcel line, which abuts your family's property, as well as fencing along the eastern property line. At this time, enforcement action will be pursued regarding the fencing installed on the property. The fencing will have to be removed or brought into compliance with the Zoning Ordinance.

Non-conforming Garage

You had asked whether the non-conforming garage that was issued a 2021 land use permit is compliant with the Onekama Township Zoning Ordinance ("ZO"). The following will detail my interpretation and determination.

A. Zoning Background

The property at 8793 S. Portage Point Dr. (“8793 Property” or “parcel”) is located in the Township’s Resort Residential (RR-3) zoning district. Inset below is an aerial map that depicts the 8793 Property in relation to the parcel lines:



Because the parcel has frontage on Portage Lake, the front of the parcel is considered the lake front side. This is based upon the following “yard” definitions within the ZO:

YARD, FRONT means a yard extending across the full width of the parcel and lying between the front parcel line and the nearest part of the principal building.

YARD, WATERFRONT means a yard extending across the full width of the parcel lying between the nearest line of the principal building and waterfront parcel line. All regulations dealing with front yards shall also apply to waterfront yards.

Accordingly, the rear of the parcel abuts your property. The side lot lines are perpendicular to the front and rear of the parcel.

The Onekama Township Zoning Ordinance ("ZO") for the RR-3 zoning district provides the following minimum setbacks within ZO Section 4204 C. including those for accessory buildings:

1. Front: Twenty-five (25) feet from the road right-of-way or front property line, whichever is the greater distance.
2. Rear: Twenty-five (25) feet.
3. Side: Ten (10) feet.

There are other provisions that address height. For example, there is a 35-foot height restriction for single family dwellings generally set forth in ZO Section 1008 below:

Height: No dwelling, or part thereof, shall be erected or altered to a height exceed two and one-half stories or 35 feet, whichever is less. Non-dwelling buildings or structures, other than accessory buildings or structures, may be erected or altered to a height not exceeding 50 feet if approved by the Zoning Board of Appeals pursuant to its power to grant variances, or the Township Planning Commission in connection with a Special Use Permit pursuant to Section 8601, et seq [Emphasis added]

In addition, ZO Section 1019 B. 5. applies to both the maximum square footage (1,200) and ('12) sidewall height of accessory buildings within the RR-3 district:

For districts zoned RR-1, RR-2, RR-3, and RR-4, one (1) detached primary accessory structure is allowed on parcels of two (2) acres or less, limited to one thousand and two hundred (1200) square feet and a maximum sidewall height of twelve (12) feet. [Emphasis added]

B. Nature of Existing Garage

There has been a garage at the rear of the 8793 Property that pre-dated zoning ordinances in the Township. The north side of this garage, at one location, lies about two feet from the rear parcel line of your Property. Because the garage lies closer to the rear lot line than the 25-foot minimum, the rear setback does not comply with the ZO.

However, because the garage pre-dated the ZO, it is considered a lawful (grandfathered) non-conforming structure.

C. Land Use Permit application

In 2021, the owner of the 8793 Property requested a land use permit to expand the garage. The existing floor area was 24' 7" x 16' 9" or about 425 square feet. The owner sought to expand the floor area by 12' x 32' or by 384 square feet. The garage would expand to about 809 square feet. The owner also sought to increase the sidewall height from about 7 to 8' on the west (entrance side with garage doors) to about 9'. The photo below shows the sidewall height on the west (entrance) side of the garage as expanded. Note that the sidewall height is measured to the roof eaves.



The photo below shows the back (east) side of the garage. The sidewall height is about 12 feet to the roof eaves at the higher portion of the sidewall.



D. Application of Zoning Ordinance

As set forth above, there were two increases in the size of the existing non-conforming garage. First, the floor area was increased from 455 square feet to 839 square feet. Second, the sidewall height was increased from about 8' to 9' in the front, and up to 12' in the back as shown in the photos above.

The question then becomes whether LUP 24-2021 was proper given the nonconforming status of the garage under the ZO.

The garage was nonconforming for just one reason: Its north side protruded well into the 25-foot rear yard setback. It otherwise conformed with all of the other setback, floor area, and height requirements.

The proposed expansion was considered in the context of ZO Article 80 which addresses "Nonconformities" and particularly ZO Section 8003 which addresses "Extensions" of Nonconformities and is set forth, in part, below. Note that ZO subsections 8003 B. and D. have been omitted because they address nonconforming parcels. The remaining subsections address nonconforming structures. I then concentrated on the underlined portions of these subsections.

8003. Extensions: Nonconforming structures or uses, may not be added to, extended, reconstructed or structurally altered, expanded during its life; and a parcel may not be used or built upon; except for any one or combination of the following restrictions:

A. Expansion or alteration of any non-conformity shall require a variance, unless all setbacks can be met and it does not expand the non-conformity.

C. Nothing here is intended to prevent any amount of addition to the size of the structure, OR prohibiting the erection of an accessory building or accessory structure if all setbacks and other requirements are met, and if:

1. The size of the structure is the only non-conforming use, and
2. The addition results in the structure being in full compliance.

ZO subsection 8003. C. was not considered because, read as a whole, it only applies to facts where someone has a substandard (smaller- than- required) structure and then requires that any addition has to be large enough to bring the structure into compliance. That scenario is not applicable to the facts here.

This led to a construction of the main portion of ZO Section 8003 in relation to subsection A. The main portion of 8003 is repeated below:

Nonconforming structures or uses, may not be added to, extended, reconstructed or structurally altered, expanded during its life; and a parcel may not be used or built upon; except for any one or combination of the following restrictions.

The first part of the language states a general rule – about not expanding nonconforming structures – but then provides an *exception* for *any one* or a combination of the subsections. This means that the focus could be on just one of the subsections A. – D. This brought my attention just to subsection A. repeated below:

Expansion or alteration of any non-conformity shall require a variance, unless all setbacks can be met and it does not expand the non-conformity.

My interpretation of subsection A. is that the term “non-conformity” applies to the garage (nonconforming structure generally). The rest of the sentence states that an expansion or alteration of the non-conformity (garage) is permissible *-without a variance* – where *all of the setbacks can be met* and *the non-conformity is not expanded*.

Property 8793’s proposal to expand the garage therefore conformed with the requirements of ZO Section 8003. A.:


First, nothing in LUP 24-2021 expanded the nonconformity. The north sidewall did not get any closer to the rear property line.

Second, the floor area expansion from 425 square feet to 809 square feet did not violate the 10’ side or 25’ front (lakefront) setbacks, respectively.

Third, the floor area expansion from 425 square feet to 809 square feet was within the 1,200 square-foot maximum for the floor space of an accessory building.

Fourth, the sidewall height did not exceed the 12' foot maximum for accessory buildings.

Regards,

A handwritten signature in black ink that reads "Katie Mehl". The signature is written in a cursive, flowing style.

Katie Mehl
Planning and Zoning Administrator
Manistee County
231.398.3525



Article 80 – Nonconformities,
of the Onekama Township Zoning Ordinance

ARTICLE 80 - NONCONFORMITIES**8001. Purpose:**

Within the districts established by this Ordinance or by amendments thereto, there exist parcels, buildings, structures, uses of parcels, and combinations of the foregoing which were lawful before this Ordinance was adopted or amended and which would be prohibited, regulated or restricted under this Ordinance. These uses, (known as non-conformities and hereinafter referred to as "non-conforming uses") may continue until they are discontinued, damaged or removed, but are not encouraged to survive. These non-conforming uses are declared, by this Ordinance, to be in incompatible with the parcels, buildings, structures, uses of parcels and combinations of the foregoing permitted by this Ordinance in certain districts. It is further the intent of this Ordinance that such non-conforming uses shall not be enlarged, expanded or extended, except as provided herein, nor will they be used as grounds for extending or modifying non-conforming uses in a manner prohibited elsewhere in the same district.

[Annotation: Modified by amendment effective January 12, 1997.]

8002. Regulations:

No such nonconforming uses of land shall be moved in whole or in part to any other portion of such land, or to a different parcel, not occupied on the effective date or adoption or amendment of this Ordinance, except as provided in Section 8003.

8003. Extensions:

Nonconforming structures or uses, may not be added to, extended, reconstructed or structurally altered, expanded during its life; and a parcel may not be used or built upon; except for any one or combination of the following restrictions:

- A. Expansion or alteration of any non-conformity shall require a variance, unless all setbacks can be met and it does not expand the non-conformity.
- B. A non-conforming parcel with a non-conforming use may not be expanded to a contiguous lot unless the expansion brings the use into compliance as a compliant use.
- C. Nothing here is intended to prevent any amount of addition to the size of the structure, OR prohibiting the erection of an accessory building or accessory structure if all setbacks and other requirements are met, and if:
 1. The size of the structure is the only non-conforming use, and
 2. The addition results in the structure being in full compliance.
- D. If the non-conformance of the parcel is an unimproved parcel which does not meet or exceed the required minimum square footage, a Land Use Permit may be issued providing the following conditions are met:
 1. The proposed use is a permitted use in the land use district.
 2. All required prerequisite permits, i.e. Health Department, County Road Commission, State Environment Department/EGLE, etc. have been obtained;
 3. All setback requirements for the District can be met.

If not, a variance must be sought and granted by the Zoning Board of Appeals.

[Annotation: Modified by amendment effective April 6, 2020.]

8004. Repairs and Maintenance:

Nothing in this Ordinance shall prevent the repair, reinforcement, improvement or rehabilitation of nonconforming use buildings, structures, or part thereof existing at the effective date of this Ordinance, rendered necessary by wear and tear, deterioration or depreciation; nor prevent compliance with the provisions of the Building Code of Michigan, relative to the maintenance of buildings or structures; provided, however, that the cost of such repair, reinforcement, improvement, rehabilitation or compliance shall not exceed sixty (60) percent of the reproduction value of such building at the time such work is done; and provided, further, there shall be no change of use which would expand the nonconforming use of such building at the time such work is done; and provided, further, there shall be no change of use of said building or part thereof.

8005. Building Damage:

- A. No building damaged by fire, razing or teardown, act of God or other causes to the extent that the damage is total (i.e. the insurance coverage, if it existed, would pay the limits of the policy for the damaged building) shall be repaired or rebuilt, except [Annotation: Modified by amendment effective November 22, 2013.]
1. in conformity with the non-use provisions of this ordinance (section 8003); and in conformity with the permitted and/or special use provisions of the respective district of this ordinance, or
 2. Reconstruction, repair or restoration of the original use shall be completed within two (2) years following the damage and resumption of use takes place within ninety (90) days of completion. The two (2) years may be extended by the Appeals Board if it finds one of the following conditions to exist:
 - a. The delay was not avoidable due to weather;
 - b. The delay was a result of a criminal investigation;
 - c. The delay was a result of a dispute between the owner and an insurance company concerning what is covered by insurance; or
 - d. The property is held in probate.
- [Annotation: Modified by amendment effective January 12, 1997. The delay was one year.]

8006. Completion:

Nothing in this ordinance shall require any change in the construction or intended use of a building or structure, the construction of which shall have been diligently prosecuted prior to the

passage of this ordinance or any amendment thereto, and the construction of which shall have been completed within twelve (12) months after said date of adoption or amendment.

8007. Non-Use:

Any building, structure or land that has been used for nonconforming use purposes but which has not been occupied by such nonconforming use for one (1) year or more shall not thereafter be used unless it conforms to the provisions of this ordinance. An extension may be granted by the Appeals Board for the following reasons:

- A. Property held in Probate;
- B. Insurance settlement in dispute; or
- C. Criminal investigation.

8008. Substitution:

- A. For the purpose of this section, the permitted uses in the land use districts listed in Section 1801 shall be considered in ascending order, as higher uses with District RR-1 containing the highest uses and District C-1 containing the least, highest uses.
- B. With the approval of the Zoning Administrator, a nonconforming use, building or structure may be replaced by or substituted with a higher use even though such replacement or substitution does not change the nonconforming use status of such use, building or structure in the land use district in which it is located.

8009. Change of Tenancy or Ownership:

There may be change of tenancy, ownership or management of an existing nonconforming use, building or structure, provided there is no change in the nature or character of such nonconforming use, building or structure.

8010. Notification:

Within thirty (30) days after the effective date of the adoption of this Ordinance or any amendment thereto, any non-conforming user shall file with the Zoning Administrator a written statement of the nature and extent of his, her or its non-conforming use.

[Annotation: Modified by amendment effective January 12, 1997.]

8011. Nonconforming use Special Uses:

- A. There are uses which were permitted by right under this ordinance in effect immediately prior to this ordinance which are not permitted uses under this ordinance. Of those uses, there are some which are listed as potential special uses in this ordinance. Those existing uses which were permitted uses, and are listed as special uses in this ordinance, shall not be considered nonconforming or nonconforming uses.
- B. Those uses, or parts of uses, which exist as a permitted use immediately prior to this ordinance, and are listed as special uses in this ordinance shall be considered to be an approved existing special use with the configuration shown on a site plan drawn to reflect how the use exists at the time of adoption of this ordinance. Parts of uses which are nonconforming use immediately prior to the adoption of this ordinance shall continue to be nonconforming uses under this ordinance. A permit in existence pursuant to this subsection shall be known as an unwritten special use permit.
- C. An owner of an unwritten special use permit may, at no charge to the owner, obtain from the Commission a certification of a site plan reflecting how the use exists at the time of adoption of this ordinance with identification of nonconforming use parts, if any. In the case of a dispute over facts on what existed at the time of adoption of this ordinance, aerial photographs flown in spring 1985 by Manistee County or other aerial photographs, flown to the same or greater standards for mapping as the county's photos, taken after the County photos but before the adoption of this ordinance, shall be given the greatest weight as evidence to establish a certified site plan. For purposes of this section, the above mentioned photo(s) may be accepted as the site plan for the unwritten special use permit.
- D. When a special use owner applies to amend the unwritten special use permit for expansion or change, a written special use permit shall be prepared for the entire use and parcel. In review of the special use permit amendment application for expansion or change, the Commission shall only review and act on the expansion or change portion of the special use permit. If the application for amendment of the special use permit is approved, approved with conditions, denied or denied in part, the action shall not change or alter those parts of the special use that are shown on the unwritten special use permit.

Map of Property with Parcel Lines, Circa 2021



Three Photos Taken May 2022 that Show the Current
Building Conditions







Notice of Meeting / Public Hearing for Newspaper

NOTICE OF SPECIAL MEETING / PUBLIC HEARING

The Onekama Township Zoning Board of Appeals will hold a Special Meeting and two Public Hearings starting at 1:00 PM, on Wednesday, October 19, 2022, at the Onekama Township Hall, 5435 Main St. Onekama, MI 49675, phone: (231) 889-3308. This special meeting will be held to consider a proposed variance request for the first hearing and a request for interpretation as well as a request for appeal of enforcement action for the second hearing.

The First Public Hearing is for the property addressed as parcel ID # 51-11-033-001-05, commonly known as 1985 2nd St. Onekama, MI 49675. The property owner is seeking a variance from the Onekama Township Zoning Ordinance, section 4204 C.1. which requires a minimum front setback, including all accessory buildings of twenty-five (25) feet from the road right-of-way or front property line, whichever is the greater distance. The parcel resides within the RR-3 Zoning District. Granting of the variance would allow for the enclosure of an existing porch resulting in a 12' x 28' or 336 sq. ft. enclosed porch with a 17' front setback.

The Second Public Hearing is for the property addressed as parcel ID # 51-11-370-103-00, commonly known as 8793 Portage Point Dr. Onekama, MI 49675. The Applicant is seeking an appeal of zoning enforcement action on an approved land use permit for this property. The parcel resides within the RR-3 Zoning District. Applicant is also seeking an interpretation of the Onekama Township Zoning Ordinance section 8003 A: Expansion or alteration of any non-conformity shall require a variance, unless all setbacks can be met, and it does not expand the non-conformity. The Onekama Township Zoning Board of Appeals proceedings will act on the interpretation and zoning enforcement action.

The public meeting details and supporting documents can be found on the Onekama Township Website www.onekamatwp.org or by visiting the Onekama Township Hall during their regular business hours.

Correspondence can be sent by mail, or hand delivered to the Onekama Township Hall, 5435 Main St., P.O. Box 458, Onekama, MI. 49675. Please, mark it ATTN: Zoning Board of Appeals. All correspondence must be received by end of business day, prior to the day of the meeting.

This notice is posted in compliance with PA267 of 1976 as amended (Open Meetings Act), MCLA 41.72 (2) (3) and the Americans with Disabilities Act (ADA) Note: Individuals with disabilities requiring auxiliary aids or services should contact the Onekama Township Board by writing or calling the following: Shelli Johnson, Clerk – 5435 Main St. P.O. Box 458 Onekama, MI 49675. Phone (231) 889-3308 Ext: 201.

Letters that were Sent to Parcel Owners and Occupants
per Planning and Enabling Act 2008



Manistee County Planning Building, 395 Third Street Manistee, Michigan 49660

September 28, 2022

Dear Occupant,

You are receiving this letter because you own or reside at a property which is within 300 feet of a property that is subject of a request made to the Zoning Board of Appeals. The Onekama Township Zoning Board of Appeals will hold a Special Meeting and two Public Hearings starting at 1:00 PM, on Wednesday, October 19, 2022, at the Onekama Township Hall, 5435 Main St. Onekama, MI 49675, phone: (231) 889-3308. This special meeting will be held to consider a proposed variance request for the first hearing and a request for interpretation as well as a request for appeal of enforcement action for the second hearing.

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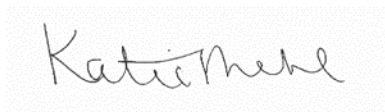
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MI 49675. Phone (231) 889-3308 Ext: 201.

Per Planning and Enabling Act of 2008 you must be notified if you own property or live within 300 feet of the property that is subject of the request. Below you will find a listing of addresses and parcel owners that have been notified of this request.

Parcel Number	Property Owner	Property Street	Property City	Property State	Additional Owner's Name	Owner's Street	Owner's City	Owner's State	Owner's Zip Code
11-370-079-00	8816 PORTAGE POINT DRIVE LLC	8816 PORTAGE POINT DR	ONEKAMA	MI		2907 FRENCH PL	AUSTIN	TX	78722
11-370-080-00	WEBB HUGH M TRUST	8842 PORTAGE POINT DR	ONEKAMA	MI		8819 PORTAGE VIEW RD	ONEKAMA	MI	49675
11-370-106-00	BOYER WM TRUST	8817 PORTAGE POINT DR	ONEKAMA	MI		3047 DIMPLE DELL CIRCLE	SANDY	UT	84092
11-370-104-00	RAY LINDA ANN & STOKES JAMES ROBERT	8831 PORTAGE POINT DR	ONEKAMA	MI		1896 PALOMA CT	LAFAYETTE	IN	47909
11-410-001-00	CAIRNS MICHAEL J TRUST &	8741 PORTAGE POINT DR	ONEKAMA	MI		2 LITTLEBROOK DR	WILMINGTON	DE	19807
11-410-024-00	CAIRNS MICHAEL J & ELIZABETH C.V.					2 LITTLEBROOK DR	WILMINGTON	DE	19807
11-370-081-00	MEADE JONATHAN D TRUST					228 18TH AVE	SAN FRANCISCO	CA	94121
11-370-122-00	KEEPSAKE LLC	8807 PORTAGE VIEW RD	ONEKAMA	MI		2142 GENEVA LN	MUSKEGON	MI	49441
11-370-125-00	WEBB GWENDOLYN PATRICIA &	8819 PORTAGE VIEW RD	ONEKAMA	MI	WEBB HUGH	19 TOP O HILL RD	DARIEN	CT	06820-3231
11-370-123-00	CAREY MARY & ETAL	8811 PORTAGE VIEW RD	ONEKAMA	MI		2907 FRENCH PL	AUSTIN	TX	78722
11-370-107-00	ONEKAMA STARDUST LLC					19 TOP O'HILL RD	DARIEN	CT	06820-3231
11-370-076-00	NICHOLSON WILLIAM & WING					803 WOOD SORREL LN	PERRYSBURG	OH	43551
11-370-077-00	NORDLOH LEE C & LISA S	8808 PORTAGE POINT DR	ONEKAMA	MI		733 INDIAN HILL RD	TERRACE PARK	OH	45174-1011
11-370-103-00	VANECEK PAULA M TRUST	8793 PORTAGE POINT DR	ONEKAMA	MI		8793 PORTAGE POINT DR	ONEKAMA	MI	49675
11-370-074-00	CLEMAR COTTAGE LLC	8805 NORWOOD AVE	ONEKAMA	MI		411 EAST 5TH AVE	LANCASTER	OH	43130
11-370-102-00	BROWN RUTH L TRUST	8791 PORTAGE POINT DR	ONEKAMA	MI		86 W WASHINGTON ST	CHAGRIN FALLS	OH	44022
11-370-108-10	OAKES MARY JANE					ARKLES BAY			XXXXX
11-370-100-00	BAKER WINIFRED NELL	8865 PORTAGE POINT DR	ONEKAMA	MI		8865 PORTAGE POINT DR	ONEKAMA	MI	49675
11-370-108-00	WHITE MARGARET & P BRIAN	LAKEISLE AVE	ONEKAMA	MI		357 SHEARER ST	PALMER	MA	1069
		1926 Second St	ONEKAMA	MI					49675

Regards,



Katie Mehl
Manistee County Planner
Onekama Township Zoning Administrator

Motions Memo



Manistee County Planning Building, 395 Third Street Manistee, Michigan 49660

September 28, 2022

ZBA Members
Onkama Township
5435 Main St
Onkama, MI 49675

Dear ZBA Members,

James Stokes and Linda Ray are seeking two individual requests from the Zoning Board of Appeals. The first request is for an interpretation of the Onkama Township Zoning Ordinance. The second request is an appeal of the Zoning Administrator's enforcement related decisions. The enforcement related decisions are regarding the property identified as 51-11-370-103-00, commonly known as 8793 Portage Point Drive, Onkama, MI 49675.

The Onkama Township Zoning Board of Appeals will act on the interpretation and zoning enforcement action. This should be conducted in two separate motions, as these are two separate requests. This memo is to act as a starting point for actions on the interpretation of the Onkama Township Zoning Ordinance and the appeal of zoning enforcement action. The first set of options is for the interpretation, and the second set of options is for the appeal of enforcement action. The following can be followed completely, partially, or not at all. They are simply to help the ZBA members have a starting point for discussion.

FOR THE INTERPRETATION REQUEST

Option A: Interpret that Article 80, Section 8003.A. of Onkama Twp Zoning Ordinance Jan 19, 2022, does not allow for vertical expansion of an existing non-conforming setback within the height limitations of the Zoning Ordinance, and agree with the interpretation of the applicant.

Option B: Interpret that Article 80, Section 8003.A. of Onkama Twp Zoning Ordinance Jan 19, 2022, does allow for allow for vertical expansion of an existing non-conforming setback within the height limitations of the Zoning Ordinance, and agree with the interpretation of the Zoning Administrator.

Option C: The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination.

Option D: The Zoning Board of Appeals may table the request, seeking further information or review.

FOR THE APPEAL OF ENFORCEMENT ACTION

Option A: Reverse the decision of the Zoning Administrator that the construction meets the requirements of the Zoning Ordinance, and therefore did not enforce on the construction that occurred under the approved land use permit 24-2021.


Option B: Uphold the decision of the Zoning Administrator that the construction meets the requirements of the Zoning Ordinance, and therefore did not enforce on the construction that occurred under the approved land use permit 24-2021.

Option C: The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination.

Option D: The Zoning Board of Appeals may table the decision, seeking further information or review.

If you have any other questions or concerns, feel free to reach out to me.

Regards,



Katie Mehl
Planning and Zoning Administrator
Manistee County
231.398.3525

Manistee County
Planning Department

