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Topic: Zoning Board of Appeals

Time: Jan 27, 2022 07:00 PM Eastern Time (US and Canada)

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**WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS**

**Agenda for Regular Meeting**

**Thursday, January 27, 2022, at 7 p.m.**

**Whitewater Township Hall**

**5777 Vinton Road, Williamsburg, MI 49690**

**Phone 231-267-5141/Fax 231-267-9020**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Set/Adjust Agenda
5. Declaration of Conflict of Interest
6. Approval of Minutes of October 28, 2021
7. Scheduled Public Hearings: None
8. Other Matters to be Reviewed by the Zoning Board of Appeals
  - a. Election of Officers
  - b. Resolution #ZBA22-01, 2022/2023 meeting schedule
  - c. Review Bylaws
  - b. Zoning Board of Appeals Members
9. Report of Planning Commission Representative – not assigned

10. Report of Township Board Representative – not assigned

11. Report of Zoning Administrator

12. Training and Training Opportunities

13. Adjournment

Whitewater Township will provide necessary reasonable auxiliary aids and services to individuals with disabilities who are planning to attend. Contact the township clerk at 231-267-5141.

**WHITEWATER TOWNSHIP ZONING BOARD OF APPEALS**  
**Minutes for Regular Meeting on Thursday, October 28, 2021**  
**7:00 p.m. at the Whitewater Township Hall**  
**5777 Vinton Road, Williamsburg, MI 49690**  
**Phone 231-267-5141/Fax 231-267-9020**

Call to Order by Chair at 7:00 p.m.

Roll Call: Bowen, Lake, Alternate Shaffer Absent: Garza

Board Representative, unassigned, PC Representative, unassigned

Set/Adjust Agenda - Set

Declaration of Conflict of Interest - None

Public Comment - None

Approval of Minutes:

MOTION by Shaffer, second by Lake, to approve minutes of September 23, 2021.

On voice vote, all in favor. Motion carried.

Scheduled Public Hearing:

Appeal #ZBA-2021-02, Owner, Grand Traverse Plastics Corp of 5780 Moore Road, Williamsburg, Michigan and Agent, AMAG LLC of 4488 W Bristol Road Suite 200, Flint, Michigan, are requesting a side yard setback (dimensional) variance from the required 60' of approximately 18'. The property is zoned N-Industrial.

Parcel 28-13-004-012-32, 5814 Moore Road, Williamsburg, Michigan.

a. Open Public Hearing on Appeal #ZBA-2021-02 at 7:09 p.m.

Public hearing was posted in the Record Eagle on October 10, 2021, and notices were sent to property owners within 300' of the property subject to this public hearing, October 7, 2021.

b. Zoning Administrator Presentation: Grand Traverse Plastics received site plan approval from the Planning Commission and Land Use Permit #2021-22 was issued. Communication between Grand Traverse Codes, AMAG and Whitewater Township determined that the site plan that includes the required fire suppression tanks and pump room encroaches into the required side yard setback area.

Did not make a recommendation to approve or deny the variance based on the standards.

Interpretation of the Industrial side yard setback of "total of 30% of (lot) width but not less than 15' " as part of 12.11 Schedule of Regulations is a proposed setback of approximately 42', a variance of 22.65' from the required 64.65' setback.

c. Petitioner Presentation: John Asselin of AMAG, LLC, Architect on the project. Had been in discussion with the Tribe but the water project did not come to fruition thus requiring a fire suppression system. There is an existing retention pond and some severe topography. Feel that the topography, retention pond and truck traffic makes the north side the best available and meets the practical difficulty. Will be putting in a turn-around based on the request from the fire department. Requesting an 18' relief.

d. Report on Site Visit: Bowen notes the location and parking area. It is built up. The pond is 15' – 20' lower and it is all sand.

Lake notes that he is comfortable with where it is proposed and how it is set up.

e. Correspondence: None.

f. Public Speaking in Favor of Appeal: .

g. Public Speaking in Opposition to Appeal: None

h. Anyone Wishing to Speak on the Appeal Who Has Not Already Commented: None

i. Close Public Hearing on Appeal #ZBA-2021-02 at 7:30 pm.

j. Discussion: Lake: Appears to be plenty of room to drive. Please with the way it is set up and planned.  
Shaffer: In favor. I like the way they have made the buildings. A lot of fill was used and made the property nicer and have kept some water flow improvements.  
Lake feels that that side is the best place for the water to be.

k. Findings of Fact:

1. Granting the variance will not be contrary to the public interest and will not be contrary to the spirit and intent of this Ordinance. Consensus - yes

2. Granting the variance shall not permit the establishment within a zoning district of any use, which is not permitted by right within the district. Consensus - yes

3. Granting the variance will not cause any significant adverse effect to property in the vicinity or in the zoning district or the Township. Consensus - yes

4. There are practical difficulties on the site which unreasonably prevent the owner from using the property for a permitted purpose without presenting an excessive burden and the practical difficulty is not resulting from any act of the applicant. Consensus - yes

5. The variance will do substantial justice to the applicant, but the decision shall not bestow the property special development rights not enjoyed by other properties in the same district, or which might result in substantial adverse impacts on properties in the vicinity which may endanger the public health, safety and welfare. Consensus – yes, because it keeps the rest of the property safe (regarding traffic)

6. The requested variance is the minimum necessary to permit reasonable use of the land. Consensus-yes

7. The practical difficulty is not self-created. Consensus – yes, because of the grade and wet land.

l. Conclusion: Approve.

m. Reasons for Conclusion: Based on the findings of facts as presented. The grade and retention pond make it very difficult. Based on the zoning administrator information.

n. Decision: Approve as requested.

o. MOTION by Shaffer, second by Bowen, to approve Appeal #ZBA-2021-02, variance as requested by Grand Traverse Plastic, based on the stated findings of fact.

Upon roll call vote: Lake-Yes; Bowen-Yes; Garza-NA; Shaffer-Yes. Motion carried.

Signing of the Variance Decision Certification Form.

Other Matters to be reviewed by the Zoning Board of Appeals

a. Correspondence Received - None

b. Zoning Board of Appeals Members - None

Report of Planning Commission Representative, Unassigned: None

Report of Township Board Representative, Unassigned: None

Report of Zoning Administrator, Hall: Shared Planning and Zoning News as continuing education.

Public Comment: None

There is no ZBA case on the docket for the next regularly scheduled meeting on November 18, 2021.

Adjournment: 8:04 p.m.

Respectfully submitted by Recording Secretary, Lois MacLean

Zoning Board of Appeals – 10/28/2021

DRAFT

# Whitewater Township

## Zoning Board of Appeals Bylaws

The following rules of procedure are hereby adopted by the Whitewater Township Zoning Board of Appeals to facilitate the performance of its duties as outlined in the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, MCL 125.3101, *et seq.*

### SECTION 1: Officers

- A. Selection and Tenure**—At the first regular meeting in January of each year, the Zoning Board of Appeals shall select from its membership a Chairperson, Vice Chairperson and Secretary. An elected Township Official shall not serve as Chairperson. All officers shall serve a term of one year, or until their successors are selected and assume office, except as noted in C below. All officers shall be eligible for re-election for consecutive terms for the same office.
- B. Chairperson**—The Chairperson shall preside at all meetings, appoint committees and perform such other duties as ordered by the Zoning Board of Appeals or Township Board.
- C. Vice Chairperson**—The Vice Chairperson shall act in the capacity of the Chairperson in his/her absence. In the event the office of Chairperson becomes vacant, the Vice Chairperson shall succeed to this office for the unexpired term and the Zoning Board of Appeals shall select a successor to the office of Vice Chairperson for the unexpired term.
- D. Secretary** – The Secretary shall act in the capacity of the Chairperson in the event that both the Chairperson and Vice Chairperson are absent. The Secretary shall also sign all minutes of the Zoning board of Appeals upon approval.
- E. Planning Commission Representative**

The Planning Commission representative to the Zoning Board of Appeals shall report the actions of the Zoning Board of Appeals to the Planning Commission and update the Zoning Board of Appeals on actions by the Planning Commission that relate to the functions and duties of the Zoning Board of Appeals.
- F. Township Board Representative**

The Township Board representative to the Zoning Board of Appeals shall report the actions of the Zoning Board of Appeals to the Township Board and update the Zoning Board of Appeals on actions by the Township Board that relate to the functions and duties of the Zoning Board of Appeals.

### SECTION 2: Meetings

- A. Meetings**—Meetings of the Zoning Board of Appeals shall be held on the Fourth Thursday of each month, or as noted below. All meetings shall take place at Whitewater Township Hall, 5777 Vinton Road, Williamsburg, MI 49690 at 7:00 P.M. The January meeting shall be mandatory in order to elect officers, review bylaws, and approve next fiscal year meeting dates.
- B. Notice**—Meetings which include a public hearing shall be noticed in the Township's newspaper of record not less than 15 days prior to the hearing. Notices shall also be mailed to property owners within 300' of the subject property. Meeting notices shall state the purpose, time and location of meetings and shall be posted in accordance with the Open Meetings Act.

- C. Public Records**—All meetings, minutes, records, documents, correspondence and other materials of the Zoning Board of Appeals shall be open to public inspection in accordance with the Freedom of Information Act, except as may otherwise be provided by law.
- D. Quorum**—A majority of the membership of the Zoning Board of Appeals shall constitute a quorum for transacting business and taking official action for all matters. The Zoning Board of Appeals shall not conduct business unless a majority of the regular members are present.
- E. Voting**—To pass or deny any variance, appeal or other official action required by the Zoning Ordinance, an affirmative vote of at least a majority of the total membership of the Zoning Board of Appeals is required. Voting shall be by voice vote; a roll call vote shall be required if requested by any Zoning Board of Appeals member or directed by the Chairperson. All Zoning Board of Appeals members, including the Chairperson, shall vote on all matters, but the Chairperson shall vote last.
- F. Agenda**—The Chairperson and the Zoning Administrator shall be responsible for preparing an agenda for Zoning Board of Appeals meetings. The order of business for meetings shall be as follows:
1. Call to Order
  2. Pledge of Allegiance
  3. Roll Call
  4. Set/Adjust Agenda
  5. Declaration of Conflict of Interest
  6. Public Comment (unrelated to Public Hearing(s))
  7. Approval of Minutes
  8. Scheduled Public Hearings
  9. Other Matters to be Reviewed by the Zoning Board of Appeals
    - a. Correspondence Received
    - b. Zoning Board of Appeals Members
  10. Report of Planning Commission Representative
  11. Report of Township Board Representative
  12. Report of Zoning Administrator
  13. Public Comment
  14. Adjournment
- G. Public Hearings**—All public hearings held by the Zoning Board of Appeals must be held as part of a regular or special meeting of the Zoning Board of Appeals. The following rules of procedure shall apply to public hearings held by the Zoning Board of Appeals:
1. Chairperson opens public hearing and announces the subject.
  2. Chairperson summarizes procedures/rules to be followed during the hearing.
  3. Applicant presents request.
  4. Township Zoning Administrator presents a summary or analysis of the request.
  5. Persons wishing to comment on the request are recognized.
  6. Chairperson closes public hearing and returns to the regular/special meeting.
  7. Zoning Board of Appeals deliberates and decides.

To ensure that everyone has the opportunity to speak, the Zoning Board of Appeals may elect to limit the time permitted for each person to speak, except that the applicant may be permitted additional time as the Chairperson allows. The Chairperson may also elect to allow persons to speak only once, until all persons have had the opportunity to speak, at which time the Chairperson, in his/her discretion, may permit additional comments.

All comments by the public and the Zoning Board of Appeals shall be directed to the chairperson.

- H. Special Meetings**—Applicants to the Zoning Board of Appeals may request a special meeting, of which all costs shall be paid by the applicant; if there is more than one applicant, the costs shall be shared equally between all applicants. The business the Zoning Board of Appeals may

*As Adopted by the Whitewater Township Board on 02/11/2020*

perform shall be conducted at a public meeting held in compliance with the Open Meetings Act. Special meetings shall also be noticed as required by the Michigan Zoning Enabling Act, as amended, the Open Meetings Act and these bylaws.

- I. **Recording Secretary**—A recording secretary shall be provided to the Zoning Board of Appeals. The recording secretary shall execute documents in the name of the Zoning Board of Appeals, perform the duties hereinafter listed below and shall perform such other duties as the Zoning Board of Appeals may determine.
  1. **Minutes**—The recording secretary shall be responsible for a permanent record of the minutes of each meeting and shall have them recorded in suitable permanent records retained by the Township Clerk. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and record of votes, conditions or recommendations made on any action and record of attendance.
  2. **Correspondence**—The recording secretary shall be responsible for presenting all communications to the Zoning Board of Appeals.
  3. **Attendance**—The recording secretary shall be responsible for maintaining an attendance record for each Zoning Board of Appeals member and report those records annually to the Zoning Board of Appeals for inclusion in the annual report to the Township Board.

### **SECTION 3: Duties of the Zoning Board of Appeals**

The Zoning Board of Appeals shall perform the following duties:

- A. Act on applications for variances, appeals, interpretations, or other matters as required by the zoning ordinance and Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, MCL 125.3101, *et seq.*
- B. Prepare an annual budget and annual report for the Zoning Board of Appeal's activities and submit to the Township Board.
- C. Attend training sessions, conferences, or meetings as needed to properly fulfill the duties of a Zoning Board of Appeals member, and for which appropriations of funds have been approved by the Township Board, as needed.
- D. Perform other duties and responsibilities as requested by the Township Board or as may be specified in another Township Ordinance.
- E. Conduct site visits as deemed necessary to evaluate an application and supporting material. Site visits shall be conducted individually.

### **SECTION 4: Duties of the Zoning Administrator**

- A. The Zoning Board of Appeals shall be assisted by the Zoning Administrator in performing the duties of the Zoning Board of Appeals, as noted in Section 3.
- B. The Zoning Administrator shall be responsible for the professional and administrative work in coordinating the functions of the Zoning Board of Appeals.
- C. The Zoning Administrator shall:
  1. Accept applications for matters to be reviewed by the Zoning Board of Appeals and ensure that such applications are complete.
  2. Forward application materials to the Zoning Board of Appeals at least one week prior to the meeting at which such matters will be considered.
  3. Inform the Zoning Board of Appeals of administrative and enforcement actions taken on behalf of the Township related to the Zoning Ordinance or other appropriate ordinance.
  4. Prepare written reviews and recommendations, if appropriate, for all requests and development proposals to be considered by the Zoning Board of Appeals.
  5. Perform other duties as may be directed by the Zoning Board of Appeals.

- D. The Zoning Board of Appeals may be assisted by other professional or Township staff as needed, including the Township Attorney, Township Engineer or other person or agency.

#### **SECTION 5: Absences, Removals, Resignations, Vacancies and Alternates**

- A. To be excused, Zoning Board of Appeals members shall notify the Zoning Administrator, Zoning Board of Appeals Chairperson or other Zoning Board of Appeals member when they intend to be absent from a meeting. Failure to make this notification prior to a meeting shall result in an unexcused absence.
- B. Members of the Zoning Board of Appeals may be removed by the Township Board, after written charges have been prepared and a hearing conducted, for nonperformance of duty, misconduct in office or upon failure to declare a conflict of interest. For purposes of this section, nonperformance of duty shall mean two or more consecutive, unexcused absences. Alternates shall be notified to attend a meeting any time a regular member will be absent.
- C. A member may resign from the Zoning Board of Appeals by sending a letter of resignation to the Township Supervisor, Township Board or Zoning Board of Appeals Chairperson.
- D. Vacancies shall be filled by the Township Board within one month of resignation or removal of a member of the Zoning Board of Appeals. Successors shall serve out the unexpired term of the member being replaced, with the exception of the Planning Commission representative, whose term shall run consecutively with the term as Planning Commissioner.
- E. The Township Board may appoint not more than two alternates to the Zoning Board of Appeals. The alternate member may be called to sit as a regular member as provided in the Zoning Ordinance and the Michigan Zoning Enabling Act.

#### **SECTION 6: Conflict of Interest**

- A. Zoning Board of Appeals members shall declare a conflict of interest and abstain from participating in a hearing or deliberations on a request when:
  - 1. A relative or other family member is involved in any request for which the zoning board of appeals is asked to make a decision;
  - 2. The Zoning Board of Appeals member has a business or financial interest in the property involved in the request, or has a business or financial interest in the applicant's company, agency or association;
  - 3. The Zoning Board of Appeals member owns or has a financial interest in neighboring property. For purposes of this section, a neighboring property shall include any property falling within the notification radius for the proposed development, as required by the Zoning Ordinance or other applicable ordinance, or
  - 4. There is a reasonable appearance of a conflict of interest, as determined by the Zoning Board of Appeals member declaring such conflict.
  - 5. The Zoning Board of Appeals member is also a member of the Planning Commission or the Township Board and voted on the same matter as a member of the Planning Commission or Township Board. However, the member may consider and vote on other unrelated matters involving the same property.
- B. The Zoning Board of Appeals member declaring a conflict of interest should state the nature of the conflict and whether he or she believes he or she could impartially consider the request before the zoning board of appeals. He or she should individually decide to abstain from any discussion or votes relative to the matter that is the subject of the conflict. The member declaring a conflict may absent him/herself from the room in which the discussion takes place, unless doing so would violate his or her constitutionally protected rights to participate. He or she should not make any presentations to the Zoning Board of Appeals as a representative of the proposal.



## **SECTION 7: Amendments**

These bylaws may be amended at any meeting by a vote of a majority of the membership of the zoning board of appeals.

Adopted by the Whitewater Township Board at their regular meeting on February 11, 2020.

Resolution #ZBA22=01

Resolution for Whitewater Township Zoning Board of Appeals  
Regular Meeting for 2022/2023  
Whitewater Township  
Grand Traverse County, Michigan

**Be It Resolved** that the Whitewater Township Zoning Board of Appeals will meet in regular sessions, as needed, for the 2022/2023 fiscal year on the following dates at 7 p.m. at the Whitewater Township Hall, 5777 Vinton Rd., Williamsburg, Michigan.

Thursday, April 28, 2022  
Thursday, May 26, 2022  
Thursday, June 23, 2022  
Thursday, July 28, 2022  
Thursday, August 25, 2022  
Thursday, September 22, 2022  
Thursday, October 27, 2022  
Thursday, November 17, 2022\*  
Thursday, December 15, 2022\*  
Thursday, January 26, 2023  
Thursday, February 23, 2023  
Thursday, March 23, 2023

\*November and December meetings are different than the normal fourth Thursday due to the holidays.

A motion to adopt the foregoing Resolution was made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

Upon roll call vote, the following voted:

Bowen -

Lake -

Garza –

Shaffer -

No Board Representative assigned

Resolution declared adopted.

I, \_\_\_\_\_, Secretary of the Whitewater Township Zoning Board of Appeals, Grand Traverse County, Michigan, do hereby certify that the foregoing is a true and complete copy of certain proceedings taken by the Whitewater Township Zoning Board of Appeals of said municipality at a regular meeting held on \_\_\_\_\_, relative to the adoption of Resolution #ZBA22-01.

\_\_\_\_\_

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GASPER RANDAZZO and  
NICOLE RANDAZZO,

Appellees,

v

LAKE TOWNSHIP,

Appellant.

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UNPUBLISHED  
November 12, 2020

No. 348559  
Huron Circuit Court  
LC No. 18-105562-AA

Before: BOONSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Appellant, Lake Township (the Township), appeals by leave granted<sup>1</sup> the trial court's order reversing the decision of the Lake Township Zoning Board of Appeals (ZBA) denying a variance request of appellees, Gasper 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

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<sup>1</sup> *Randazzo v Lake Township*, unpublished order of the Court of Appeals, entered August 30, 2019 (No. 348559).

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.<sup>2</sup>

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."<sup>3</sup> 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.

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.

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<sup>2</sup> § 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."

<sup>3</sup> 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.



“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 NW2d 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 NW2d 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 NW2d 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 NW2d 47 (1997).]

“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 NW2d 33 (2016).

Section 1310 of the Zoning Ordinance provides:



## LAKE TOWNSHIP ZONING 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 ( $\frac{1}{2}$ ) 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, 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. The ZBA’s finding was therefore 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. 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 enlargement or alteration 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.

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.

/s/ Mark T. Boonstra  
/s/ Mark J. Cavanagh  
/s/ Stephen L. Borrello