

MINUTES

LONG LAKE TOWNSHIP ZONING BOARD OF APPEALS
LONG LAKE TOWNSHIP HALL
8870 NORTH LONG LAKE ROAD
TRAVERSE CITY, MI 49684

WEDNESDAY, JANUARY 2, 2008 (Regular Meeting and Public Hearing)

1. CALL TO ORDER – Acting Chair Humitz called the meeting to order at 7:00 P.M..
2. ROLL CALL: Zoning Board of Appeals members present: Ron Lautner, Bill Kaupas, Max Bott, (as alternate sitting in for Howard Geerlings); Mark Humitz, and John Linnerson

Township Staff Present: Township Attorney Bryan Graham of Young, Graham, Elsenheimer & Wendling, P.C.; Shirley Mesch, Zoning Administrator; Anne Wendling, Acting Recording Secretary. (Noted that Recording Secretary, Debbie Lint, had resigned as of this date)

Eugene Simonescu, applicant, was also in attendance

3. MINUTES: Lautner moved and Linnerson seconded to approve the minutes of December 4, 2007. The motion carried.
- 4.
5. AGENDA: Linnerson moved to approved the agenda with one change. Under “New Business “, items 2 and 3 will be reversed. Lautner seconded the motion and the motion carried.
6. PENDING BUSINESS: NONE
7. NEW BUSINESS – PUBLIC HEARING
 - A) ZBA 01-08-01, EUGENE SIMIONESCU (OWNER) 1830 SNOWSHOE LANE, TRAVERSE CITY, MI 49684, PROPERTY ID. NO. 28-08-213-040-00, LOT 40 LONG LAKE ESTATES, SEC. 21, T27N R12W, LONG LAKE TOWNSHIP, GRAND TRAVERSE COUNTY, COMMONLY ADDRESSED AS 9802 LOONS CALL DRIVE, TRAVERSE CITY, MI 49684. PURPOSE: TO HEAR AN APPEAL OF THE ADMINISTRATIVE DECISION MADE BY THE ZONING ADMINISTRATOR THAT THE EXISTING GARAGE IS A MAJOR ACCESSORY BUILDING (DETACHED) AND LOCATED LESS THAN TEN (10) FEET FROM THE SINGLE FAMILY DWELLING, WHICH IS IN VIOLATION OF ARTICLE 4,

SECTION 4.6 OF THE LONG LAKE TOWNSHIP ZONING ORDINANCE #60, AS AMENDED, PER ARTICLE 23 – ZONING BOARD OF APPEALS, SEC. 23.4.1., ADMINISTRATIVE REVIEW. THIS PARCEL IS LOCATED WITHIN AN R-1 LOW DENSITY RESIDENTIAL DISTRICT.

- 1) OPEN THE PUBLIC HEARING: Chair Humitz opened the public hearing at 7:03pm

- 2) PRESENTATION BY THE APPLICANT
Simionescu stated that he simply wants to move forward with plans to sell the property. At this time, Township Attorney Bryan Graham asked Simionescu several questions to clarify the record. Graham asked if the issue at the present time began with a 1996 Land Use Permit. The applicant answered in the affirmative. Graham asked the applicant if he originally applied for an attached garage and the applicant answered in the affirmative. Graham asked Simionescu if at the time of construction he thought that the garage was in compliance with the Zoning Ordinance. Simionescu answered that he thought it was in compliance. Graham asked Simionescu about how much it cost to build the garage. Simionescu answered that he thought it was about \$25,000 to build the present garage. Graham asked the applicant why he felt that enclosing the breezeway in a fashion that would be compliant with the Zoning Ordinance did not seem to be an option at this point. Simionescu answered that it would take the curb appeal away from the structure and that there would be no bay window for the kitchen nook as designed. Graham asked the applicant if it would be impractical to enclose the breezeway and Simionescu answered that it would be impractical. Graham asked the applicant what it would cost to move the garage two feet to comply with the ten foot setback for a detached garage? The applicant answered that it would cost more than \$25,000. Graham asked the applicant what month the garage was completed. The applicant answered that it was approximately February of 2006. Graham asked how long the garage was in violation before the Township discovered it was in violation and the applicant answered that it was about one year.

- 3) PRESENTATION BY STAFF
Zoning Administrator Mesch stated that exhibit #17 of the packet in front of the Zoning Board of Appeals is what was given to them regarding the process she used to arrive at her conclusion. She stated that for assessment purposes, the garage has been assessed as a detached garage. Mesch stated that she spoke with

the Director of the Grand Traverse County Construction Code office, Bruce Remai, and he stated that it would not be difficult to enclose the area, but would not give a cost estimate. Mesch also stated that there had been two previous permits issued just like this one in the subdivision and those homes have enclosed breezeways. All eleven other homes in the subdivision comply with an enclosed breezeway as defined in the Zoning Ordinance.

- 4) PUBLIC COMMENT: IN PERSON, WRITTEN OR FAXED: None. Mesch stated that the potential buyer came in the last week before Christmas with a sketch to enclose the area. The applicant was not aware of the information.

5) DISCUSSION BY BOARD MEMBERS:

Humitz asked the applicant what was unique about this particular home compared to the others and the applicant stated that he bought the plans for this home from an architect. Humitz asked whether he had built homes with this same connection to the garage and the applicant stated that he did. Both Lautner and Kaupas thought that there might have been a miscommunication in regards to the parallel lines on the drawing that Simionescu presented to the Zoning Administrator. Kaupas stated that he was unclear whether this meeting was requested by the applicant or the Board. Township Attorney Graham gave a short history of this case to the ZBA members and stated that Township Attorney Young was here at the November meeting and advised the ZBA that this case would be better heard as an administrative appeal. Humitz reiterated that the ZBA was to determine first whether Zoning Administrator Mesch's interpretation of the Zoning Ordinance was correct and then the second issue was the fairness of enforcement. Township Attorney Graham added that the ZBA also needed to determine the status of the existing garage.

- 6) CLOSE THE PUBLIC HEARING: There no further public comment, Chairman Humitz closed the public hearing at 7:32pm.

7) DECISION AND RECOMMENDATION BY THE ZONING BOARD OF APPEALS

The Board decided to go over the Proposed Findings of Fact provided by Township Attorney Graham.

Lautner moved to accept all seventeen exhibits as presented. Linnerson seconded the motion and the motion carried.

Findings of Fact

The Zoning Board of Appeals makes the following Findings of Fact in connection with the appeal by Eugene Simionescu of the administrative decision made by the Zoning Administrator that the garage built on Mr. Simionescu's property is a detached accessory building which is in violation of the Long Lake Township Zoning Ordinance.

1. The Board finds that there are potentially two issues involved in this appeal. First, the Board finds that it must decide whether the garage built on the property is an attached accessory building or a detached accessory building. If the Board finds that the garage is a detached accessory building, then the Board must decide whether under the circumstances presented in this case whether enforcement action should be taken.

Issue #1: Whether the garage is an attached or detached accessory building

2. The Board finds that the property is zoned R-1 under the Zoning Ordinance. (Exhibits 1 and 3)
3. The Board finds that Section 8.2.2 of the Zoning Ordinance provides that accessory buildings are a use permitted by right in the R-1 district subject to the requirements of Section 4.6. (Exhibit 1)
4. The Board finds that the Zoning Ordinance provides the following definitions related to accessory buildings:

Accessory Building, Major: An accessory building that is larger than 100 square feet, regardless of its height.

Attached Accessory Building: An accessory building that is structurally attached to and is an integrated part of (by location, materials, and architectural design) a PRINCIPAL building.

Detached Accessory Building: An accessory building not structurally attached and not made a part of the PRINCIPAL building.

(Exhibit 1)

5. The Board finds that Section 4.6.1.a provides that accessory buildings shall be a minimum of 10 feet from any other building. (Exhibit 1)
6. The Board finds that Section 4.6.1.c provides:

If an accessory building becomes structurally attached to a principal building, it shall be deemed to be part of the principal building and shall conform to all the regulations, which apply to principal buildings in the respective Zoning District. Structurally attached shall be interpreted to mean attachment completely enclosed by four (4) walls and roof construction that meets the residential dwelling unit construction requirements of Grand Traverse County Construction Code Office.

7. The Board finds that the existing garage is connected to the principal dwelling by roofing, engineered trusses, and flooring and that an approximate 8 foot porch runs below the eaves of the roof. (Exhibit 5, exhibit B-1)
8. The Board finds that because the Zoning Ordinance defines the term “attached accessory building” and specifies a meaning for the phrase “structurally attached” in Section 4.6.1.c, it must interpret these zoning provisions following the rules of statutory construction provided by state law. (Exhibit 15)
9. The Board finds that a number of rules of statutory construction should be applied in this case. First, courts read statutes (or in this case the Zoning Ordinance) in their entirety and give meaning to one section in order to produce, if possible, an harmonious and consistent enactment as a whole. *Gorney v City of Madison Heights*, 211 Mich App 265, 272 (1995). Second, if the language of the statute (or Zoning Ordinance) is unambiguous, the statute must be applied as written and no further judicial construction is required or permitted. *Sun Valley Foods Co. v Ward*, 460 Mich 230, 236 (1999). Finally, it is a settled rule of statutory construction that where a statute contains a specific statutory provision and a related, but more general, provision, the specific one controls. *In re Haley*, 476 Mich. 180, 198 (2006); *Gebhardt v. O'Rourke*, 444 Mich. 535, 542 (1994). (Exhibit 15)
10. The Board finds that to fall within the definition of an “attached accessory building” the accessory building must be “structurally attached” and must be an integrated part of a principal building. (Exhibit 1)
11. The Board finds that the phrase “structurally attached” is not defined in the definition article of the Zoning Ordinance. (Exhibit 1)
12. The Board, however, finds that Section 4.6.1.c of the Zoning Ordinance provides that the phrase “structurally attached” shall be interpreted “to mean attachment completely enclosed by four (4) walls and roof construction that meets the residential dwelling unit construction requirements of Grand Traverse County Building Code.” (Exhibit 1)
13. The Board finds that because the phrase “structurally attached” is used both in the definition of “attached accessory building” and in Section 4.6.1.c, the Zoning

Ordinance should be interpreted as a whole giving meaning to the phrase “structurally attached” in the definition of “attached accessory building” in a way consistent and harmonious with the same phrase used within Section 4.6.1.c. (Exhibit 15)

14. The Board, therefore, finds that when applying the rules of statutory construction the definition of “attached accessory building” and the provisions of Section 4.6.1.c are hereby interpreted to require that an attached accessory building be completely enclosed by four (4) walls and roof construction that meets the residential dwelling unit construction requirements of the Grand Traverse County Building Code. (Exhibits 1 and 15)
15. The Board finds that the existing garage constructed on the property is not completely enclosed by four (4) walls and roof construction that meets the residential dwelling unit construction requirements of the Grand Traverse County Building Code.
16. The Board, therefore, finds that the garage constructed on the property is not an attached accessory building under the requirements of the Zoning Ordinance, but rather is a detached accessory building.
17. The Board further finds that the garage constructed on the property is located less than 10 feet from the principal dwelling.
18. The Board, therefore, finds that because the garage is a detached accessory building that is located within 10 feet of the principal dwelling, the garage is in violation of Section 4.6.1.a of the Zoning Ordinance and that the Zoning Administrator’s decision concluding that the garage is in violation of the Zoning Ordinance is hereby affirmed.

Issue #2: Whether under the circumstances of this case enforcement action should be taken for the Zoning Ordinance violation

1. The Board finds that on January 26, 2006 Eugene Simionescu filed an application for a Land Use Permit. The application sought among other things the construction of a 22 X 25 attached garage. (Exhibit 2)
2. The Board finds that Land Use Permit No. P06135 was issued on February 8, 2006. (Exhibits 2 and 3)
3. The Board finds that the Land Use Permit authorized among other things construction of a 22' X 25' attached garage. (Exhibit 3)
4. The Board finds that on March 1, 2006 a setback inspection (when the foundation boards for the construction project are in place) was conducted on the

property. At that time the inspector, Kim Smith, noted that everything was OK and that a green sticker was given for the project. (Exhibits 2 and 17)
Acknowledging that this has happened.

5. The Board finds that a Certificate of Occupancy was issued by the Grand Traverse County Construction Code Office following the final building inspection on April 24, 2007. The Certificate of Occupancy notes that the project included an attached garage. (Exhibit 4)
6. The Board finds that in early October or late September, 2007 Mr. Simionescu sought a Land Use Permit to construct a detached accessory building on his property. At that time the Zoning Administrator indicated that the new detached accessory building was not permitted, since the existing garage was a detached accessory building and that under Section 4.6.2 of the Zoning Ordinance only one (1) major accessory building was permitted in the R-1 district on a parcel that was less than two (2) acres in size. At this same time the Zoning Administrator also concluded that the existing detached garage was in violation of the Zoning Ordinance, since it was located less than 10 feet from the principal dwelling. (Exhibit 1 and January 2, 2008 ZBA minutes)
7. The Board finds that as a result of the Zoning Administrator's decision that a second detached accessory building was not permitted, Mr. Simionescu on October 9, 2007 filed a petition seeking a variance for the additional accessory building. (Exhibit 5)
8. The Board finds that the hearing for this variance was scheduled for November 7, 2007. (Exhibit 6)
9. The Board finds that at the November 7, 2007 public hearing the Township attorney, Jim Young, advised the Board that the case should not be handled as a variance request, but rather as an appeal of the Zoning Administrator's administrative decisions. Following this advice, the Board tabled the matter until its December, 2007 meeting. (Exhibit 12)
10. The Board finds that at its December 4, 2007 meeting, following the advice of the Township attorney, Jim Young, given at the November 7, 2007 meeting, and the advice of Township attorney, Bryan Graham, given in his memo dated November 29, 2007 (Exhibit 13) the Board passed motions converting the case from a variance request to an administrative appeal of the Zoning Administrator's decision and scheduling the appeal hearing on the appeal for January 2, 2008. (Exhibit 14)
11. The Board finds that because it has already concluded that the existing garage is a detached accessory building which is in violation of the Zoning Ordinance (since it is located less than 10 feet from the principal dwelling), it must decide

whether under the circumstances of this case the Township should take enforcement action for the zoning ordinance violation.

12. The Board finds that on pages 4-6 of his November 29, 2007 memo (Exhibit 15) Township attorney Graham has summarized Michigan cases dealing with situations in which a municipality can lawfully enforce an Ordinance and situations in which a municipality cannot lawfully enforce an Ordinance when a mistake was made or incorrect information was given by a municipal official.
13. After considering the cases summarized in Exhibit 15 the Board finds that while no factor is in itself decisive of the case, the entire circumstances of this matter, when viewed together, present compelling reasons why it would be unfair for the Township to enforce its Zoning Ordinance in this case. The compelling reasons on which the Board relies for this conclusion are as follows:
 - a. The Land Use Permit issued in this matter authorized construction of an “attached” garage.
 - b. Mr. Simionescu acted in good faith in constructing the garage in a manner he thought was in compliance with the Zoning Ordinance requirements.
 - c. Mr. Simionescu spent approximately \$25,000.00 when constructing the garage in reliance on the Land Use Permit issued.
 - d. According to Mr. Simionescu it would be impractical to construct the enclosure necessary to convert the detached garage to an attached garage as required by the Zoning Ordinance.
 - e. According to Mr. Simionescu it would be costly to move the existing detached garage two (2) feet farther away from the principal dwelling to bring the existing detached garage into compliance with the Zoning Ordinance.
 - f. The existing garage has been fully completed for over twelve (12) months before the Zoning Ordinance violation was discovered.

Motion

Motion by Lautner, seconded by Bott, that based on the Findings of Fact made in this matter, Mr. Simionescu’s existing garage is a detached accessory building that is in violation of Section 4.6.1.a of the Zoning Ordinance (since it is located within 10 feet of the principal dwelling), but that under the unique circumstances of this case it would be

unfair to enforce the zoning ordinance in this matter. As a result the Zoning Administrator's decision to enforce the Zoning Ordinance is hereby REVERSED.

After a short discussion of the matter a roll call vote was taken and the motion carried 4-1 with Linnerson dissenting.

8. PUBLIC COMMENT: None

9. REPORTS

A. PLANNING COMMISSION REPRESENTATIVE: Humitz stated that the Planning Commission is moving forward with the Zoning Ordinance review. He also stated that the Planning Commissioners had a training session with the Planner. He added that the biggest issue facing the Planning Commissioners right now in regards to the Zoning Ordinance review is how to involve the public. A couple members of the ZBA inquired if the definition of "attached" could be more clearly described in the Zoning Ordinance? Zoning Administrator Mesch gave the history of why the zoning ordinance read as it did and added that some property owners were adding one piece of wood between the accessory building (garage) and the house and calling that "attached". This was not acceptable to the ZBA or the Planning Commission.

B. ZONING ADMINISTRATOR: No report

10. CORRESPONDENCE: None

11. ADJOURNMENT: There being no further business, motion by Lautner and seconded by Linnerson to adjourn the regular meeting at 8:19pm.

Ron Lautner, Secretary
Long Lake Township Zoning Board of Appeals

Anne Wendling, Acting Recording Secretary
Long Lake Township Zoning Board of Appeals

NOTE: These minutes are subject to amendment and/or correction prior to their adoption