APPROVED
MEETING
GLEN ARBOR TOWNSHIP BOARD OF APPEALS
Thursday, July 20, 2017 at 6:00 pm
GLEN ARBOR TOWNSHIP HALL

PRESENT: Don Lewis, Denny Becker, George Quarderer, Bill Freeman, Pam Lysaght, Harvey Warburton, Zoning Administrator Tim Cypher, Township Attorney Dick Figura

ABSENT: None

GUESTS: 13 Guests Present

CALL TO ORDER: Chairman Bill Freeman called the meeting to order at 6:00 p.m. with the Pledge of Allegiance.

ZBA Case #2017-02: Joy M. Taylor requests two dimensional variances to the side setback requirement to complete a property line adjustment which would relocate a line separating two parcels and bisecting an existing legal non-conforming home. The parcels are owned by the applicant and are zoned Residential 2; Tax ID #'s are 006-123-023-00 & 006-123-024-00. The parcels are located at 5511 & 5545 W. River Road, Section 23, T29N R14W, Glen Arbor Township, Leelanau County, Michigan. The requested setbacks were incorrectly listed as 2.1' and 1.04' on the agenda; the corrected requests are for variances of 1.1' and .40'.

No conflicts of interest were declared by members of the ZBA. Kathleen King O'Brien presented herself as the attorney for Joy M. Taylor, applicant. ZA Tim Cypher summarized the case.

1. Presentation by petitioner or representative – O'Brien summarized the history of the property. The bisecting property line was discovered during a survey of a neighboring property. They are requesting a property line adjustment which will not bisect the home, which will need the requested variances. Ms. Taylor was not previously aware of the bisecting property line, and they do not believe the previous owner of the 5545 River Road property (Justice Betty Weaver) was aware either.
2. Read communications regarding the case – Cypher did not receive any communications regarding this case.
3. Comments and statements from the audience – There were no comments from the audience
4. Discussion and question by the Board with staff – The board discussed the need for a variance, and possible alternatives. Cypher stated that all structures on the property are legal non-conforming structures, meaning they have been in place since before the Zoning Ordinance was created. He and the township assessor searched for records, dating as early as the 1950s, which would direct them to how the initial bisecting property line was creating, but were unable to find anything related to this subject. The board discussed how the lot lines were created and how it became a bisecting property line – there was no final determination of how this issue arose. Cypher asked if there were any questions on his staff report – there were none. Cypher read the required findings of fact, taken from Section IV.1 of the Zoning Ordinance.
5. Assess Variance Approval Standards/Findings of Fact –

IV.4.a: There are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.
Board Discussion: The Board discussed whether moving the detached garage was a reasonable requirement, as moving the garage would remove the need for a variance. Cypher stated that the Fire Chief has signed off on moving the property line. If the garage was moved closer to the house, a different variance would be needed regarding the distance between buildings. The applicants have brought forth the minimum possible request for a variance.
Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met Garage being moved would create other difficulties/variance requests
Warburton: Not Met Garage could be moved

IV.4.b: A genuine practical difficulty exists because of unique circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district, and shall not be recurrent in nature.
Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met
Warburton: Not Met

IV.4.c: The hardship or special conditions or circumstances do not result from actions of the applicant.
Board Discussion: It was asked when these houses were built; Cypher replied one in 1955 and one in the mid-1960s. They have been sold in between now and then – the board discussed how this applied to this finding of fact. The board discussed who created this issue, and whether the prior owner's actions and intentions (and errors thereof) have been passed on to the current owner/applicant. They also discussed the grandfathering of these structures, and the fact that they are non-conforming to the current Zoning Ordinance, as well as the legal history of these properties and the Zoning Ordinance. The board discussed the procedures of following the Zoning Ordinance and granting a variance.
Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met
Warburton: Not Met Board is here because applicant wants to change the property line

IV.4.d: The variance will relate only to property under control of the applicant.
Lewis: Met
Quarderer: Met

Freeman: Met
Lysaght: Met
Warburton: Met

IV.4.e: The variance will be in harmony with the general purpose and intent of this Ordinance and will not cause a substantial adverse effect upon surrounding property, property values, and the use and enjoyment of property in the neighborhood or district.
Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met
Warburton: Met

IV.4.f: Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.
Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met
Warburton: Not Met Moving the detached garage is not unnecessarily burdensome

IV.4.g: The variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship.
Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met
Warburton: Met

IV.4.h: The variance shall not permit the establishment, within a district, of any use which is not permitted by right within that zoning district.
Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met
Warburton: Met

6. Motion on the Request – Board Discussion –
   Pam Lysaght moved to approve the Joy M. Taylor dimensional variance request #2017-02 as presented in the application due to the findings of fact as discussed during this Public Hearing. George Quarderer seconded. There was no discussion.
7. Call the Question – A roll call vote was taken. **In favor: Pam Lysaght, Bill Freeman, George Quarderer, Don Lewis. Opposed: Harvey Warburton.** Warburton stated that he does not feel

that the requirements have been met, and therefore he must say he is opposed, although overall he is in favor of the request.

ZBA Case #2017-03: Roy & Carolyn Livingston request a five foot dimensional variance to allow for creating a non-conforming structure to separate two platted lots that have been historically considered one parcel. The parcel is owned by the applicant and has split zoning of Business (on Lot 49) and Residential 1 (on Lot 51); Tax ID# 006-790-049-00. The parcel is located at 5890 S. Lake Street, Section 22, T29N R14W, Glen Arbor Township, Leelanau County, Michigan.

No conflicts of interest were declared by members of the ZBA. ZA Tim Cypher summarized the case. Peter Fisher presented himself as representative for the Livingstons.

1. Presentation by petitioner or representative – Fisher presented the case for the Livingstons, and gave background on the property. Historically, these two lots have been taxed under one ID number; the applicants are not sure why this was done as they are two platted lots of record, platted in the 1920s and sold in the 1950s. The Livingstons purchased the lots in 2016, under the assumption that they were two separate lots, unaware that they were taxed under one parcel ID number. The home on Lot 49 is within the side-lot setback for the line between the two lots; the owners would like to have separate tax ID numbers for the two lots, and hence need the dimensional variance.
2. Read communications regarding the case – Cypher did not receive any communications regarding this case from the public. Ed Roy is the attorney for the Livingstons and his communications regarding the property as well as those of township attorney Dick Figura have been distributed to the board.
3. Comments and statements from the audience – There were no comments from the audience
4. Discussion and question by the Board with staff – The board discussed the platted lots versus the tax ID number. The property was conveyed to the new owners as a single deed, but all maps show two separate lots. The board discussed the history of the lots. Cypher reiterated that these are two platted lots of record, and the issue is that he, as Zoning Administrator, does not have the ability to create a non-conforming structure. Cypher and the board discussed other options for the Livingstons, including administrative options based on the Zoning Ordinance such as a four-hour rated fire wall on the home, which allows a 0-foot setback on business-zoned lots. Fisher stated that if two parcel IDs had been created initially, this would not be in front of the ZBA, as the structure would be grandfathered as non-conforming. There is a well, drilled in 1994, on Lot 51; this was discussed by the board. As far back as the County records stretch (the 1950s), these two parcels have been under one tax ID number.

   The board discussed the fact that if they granted this variance, they would be creating a non-conforming structure. Figura and Cypher stated that during their tenure with the township, they have not seen the ZBA create a non-conforming structure, and Cypher stated that in some ways it goes against the basic tenets of zoning. However, Figura stated in his prior correspondence that the Livingstons have a plausible argument. The board discussed non-conforming structures, and Cypher reiterated that he does not have the authority to create a non-conforming structure, only the ZBA does.

The board discussed the differences between the options available to the Livingstons (the fire wall) and the Taylors (moving the garage). Moving the garage would have created other zoning issues and variance needs. Fisher stated that the fire wall was considered, but he and his clients determined that it would be unsightly and would not fit into the character of their neighborhood. At the moment, there is an 8" overhang of the house eve into the adjoining platted lot, but if the variance is approved, the Livingstons have agreed to remove this portion of eve edge so that there is no encroachment on the neighboring lot.

Figura stated that this started when the Livingstons put in a request for a lot split to create a second tax ID number, so that they could sell the parcel without a home on it. The split could not be granted, because of the house being too close to the property line. Figura suggested putting conditions on the variance, if granted, including not allowing the business-zoned lot (with the current house) to use the well on the residential-zoned lot and requiring them to drill and use their own well. The board and staff again discussed setting the precedent of creating a non-conforming structure. The board and staff discussed how the findings of facts are applied, and the fact that they need to make decisions based on the findings of fact, rather than what they feel is common sense or "from the heart". Cypher stated that precedent can only be followed when the facts are exactly the same – it would be very rare for the facts in two cases to be exactly the same. Figura stated that he is not worried about precedent in this situation, because every situation has different facts. Unless the ZBA can see that a situation has facts that are going to recur again and again, they should not be worried about precedent. Figura cannot see the facts in this case recurring again.

It was asked, if the lots are separated, is the residential lot buildable? Cypher replied that as long as setback requirements are met, a home could be built on the residential lot, as it is a platted lot of record. Cypher does not see any other reasonable options for these properties, other than those previously discussed. The applicant has spoken regarding the option of a fire wall. Cypher read the required findings of fact, taken from Section IV.1 of the Zoning Ordinance.

5. Assess Variance Approval Standards/Findings of Fact –

IV.4.a: There are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.
Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met Absolutely unique circumstances
Warburton: Met

IV.4.b: A genuine practical difficulty exists because of unique circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district, and shall not be recurrent in nature.

Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met
Warburton: Met

IV.4.c: The hardship or special conditions or circumstances do not result from actions of the applicant.
Board Discussion: The board discussed whether the applicants have created these conditions by applying for the land split. Despite the single tax number, the lots were originally platted separately in the 1920s.
Lewis: Met
Quarderer: Not Met The applicants are creating these conditions
Freeman: Met
Lysaght: Met
Warburton: Met

IV.4.d: The variance will relate only to property under control of the applicant.
Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met
Warburton: Met

IV.4.e: The variance will be in harmony with the general purpose and intent of this Ordinance and will not cause a substantial adverse effect upon surrounding property, property values, and the use and enjoyment of property in the neighborhood or district.
Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met
Warburton: Met

IV.4.f: Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.
Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met
Warburton: Met

IV.4.g: The variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship.

Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met
Warburton: Met

IV.4.h: The variance shall not permit the establishment, within a district, of any use which is not permitted by right within that zoning district.
Lewis: Met
Quarderer: Met
Freeman: Met
Lysaght: Met
Warburton: Met

6. Motion on the Request – Board Discussion –
   Harvey Warburton moved to approve the Roy & Carolyn Livingston dimensional variance request #2017-03 as presented in the application due to the findings of fact as discussed during this Public Hearing. Don Lewis seconded. There was no discussion.
7. Call the Question – A roll call vote was taken. **In favor: Pam Lysaght, Bill Freeman, George Quarderer, Don Lewis, Harvey Warburton. Opposed: None.**

At this point, the board took a short break before re-starting the meeting.

ZBA Case #2017-04: Due to a Circuit Court order remanding "the issue of whether the disputed building is permitted as a detached residential extension," Dana Roman Cowell requests an interpretation of the Zoning Board of Appeals decision per zoning ordinance Section IV.6. The property is zoned Residential 2; Tax ID 006-131-043-01. The parcel is located as 7107 S. Dune Highway, Section 31, T29N R14W, Leelanau County, Michigan.

The applicant was represented by Robert Parker, attorney and Leslie Sickterman, professional planner.

Bill Freeman stated that this is a re-hearing of a case that was heard earlier. It was taken to court, and the judge wanted the ZBA to look at it again. Cypher stated that this is a court-ordered remand. Freeman read the court order, as follows:

"The Court being fully advised in the premises at the Hearing on March 9, 2017, and for the reasons stated on the record, the decision of the Glen Arbor Zoning Board of Appeals that accessory buildings are permitted in the R-2 district is REVERSED and the issue of whether the disputed building is permitted as a detached residential extension, or under some other justification, is remanded to the Zoning Board of Appeals if Glen Arbor Township wishes to allow the building as a detached residential extension or under some other justification."

Freeman asked for clarification that Judge Powers is saying that we categorized it incorrectly? Cypher stated that, in his original staff report last year and in his staff report for this hearing tonight, he incorrectly used the term "accessory building" instead of the term "detached residential extension" in the land use permit approval. Freeman asked what the ZBA is supposed to do, change its determination as to what it's called? Cypher responded that that is what is in front of the ZBA this evening, if it qualifies

as a detached residential extension. Figura stated that it is not a question of whether the ZBA is supposed to do that. It is that it is before the ZBA for the board to decide if this qualifies as a detached residential extension, since they can't find that it is an accessory building since the judge has said that is not permitted under the Zoning Ordinance.

Quarderer asked for the definition of a detached residential extension. Cypher stated that there is a passage in the Zoning Ordinance, quoted in the staff report. This is the closest to a definition that the Board is going to find in the Zoning Ordinance. Cypher read the definition, given at the top of Page 3 in his staff report:

"C. Detached Residential Extension

1. Supplemental dwelling space ie; finished room over one story garage detached from residence (dwelling)
2. Construction must meet all building requirements as set forth in zoning requirements and must comply with all building codes.
3. Supplemental space shall not exceed one room and bath. Kitchen area is not allowed.
4. Use of space may be bedroom, office, workshop or related to private one family dwelling."

Pam Lysaght stated that this is an unusual building to be a detached residential extension. She asked what the history as far as these types of buildings has been? She stated that there were some in the record that Cypher provided, but she would like to hear more on the record. Cypher stated that he had given the board a list that he and the assessor had pulled off the records that noted what cannot be called accessory buildings because the Judge has disallowed that term, but in reality that is how they have been treated over the years. Obviously it was an error to put accessory buildings. A little bit of the history goes back, from 1968, when the original Zoning Ordinance was put in place, accessory buildings were allowed in Residential Zoning districts, and that was re-done in 1975 with the passage of the ordinance that the board has a copy of. In most cases, every township in Leelanau County that Cypher looked at and the surrounding area, accessory buildings are some sort of either use-by-right or allowed as an accessory structure which is customarily incidental to the existing dwelling that's there right now. Cypher thought he had covered the fact that there are no definitions for detached residential extension other than what has been given, or for a garage. In doing additional research since the court case, accessory buildings were in place until sometime in the early 1980s, and, although they were unable to find documents to support this, the accessory buildings were allowed historically, but when they put in detached residential extensions, they left out accessory buildings.

Lysaght asked why, do we know? Cypher stated that nobody knows for sure, including the Planning Commission Chair, who he spoke to. Cypher stated that Lewis might have more of an idea? Lewis replied that he didn't know, and stated that he was befuddled, because when he read the information, it looked like it was simply a typo or oversight, because he would think historically garages, accessory buildings, storage buildings, pole barns, any of those, have been a part of Glen Arbor's zoning from day one. So, for his 30 years of involvement, he was unaware that today's ordinance is messed up, because somehow that just got dropped or left out or overlooked in some changes or alterations that have been made since then. He thinks that in terminology or vernacular, he feels that Cypher is too accurate to have used the wrong word. It sounds to him like this is just a technicality, an error, an omission; there's nothing that explains why something that has always been there isn't there anymore even though that's what's always been done and what they've always been called. So the township either has to amend the

ordinance, and get that back in there like it should be, and it is his understanding that some of that is working its way through the Planning Commission to try to correct that. Cypher stated this hasn't been discussed, but there has been an amendment proposed by Ms. Roman Cowell, and at the June PC meeting there was a Public Hearing to discuss the topic. On advice of legal counsel, because the court case is still pending, the PC took the information but wanted to see how the lawsuit played out. Lewis stated that, speaking on behalf of the Township Board, that was the exact conversation he had prepared for tonight, and he knows that the record from the Township Board meeting from Tuesday night is to assume that whatever needs to be done to correct this oversight or clarify any misunderstandings will happen as soon as possible. A member of the Township Board filled them in briefly on what the status was and why, but it was a clear portion of the meeting Tuesday that everyone should be moving as aggressively as necessary on all fronts to correct the mistakes or clarify any possible inconsistencies or misunderstandings, but he still thinks that that doesn't address why the ZBA has to meet tonight, because the judge has specifically remanded it back to this board and if he's correct, the ZBA has to figure out what to do tonight.

Warburton stated that the detached residential extension definition addresses primarily the space above another building, called here a one-story garage. It talks about the residential space and implies that a one-story garage is an acceptable building within the code. Lewis stated that he thought the key word was dwelling. First of all, there is a residential district, and in most cases, that is a house, a single-family house, using the property for dwelling purposes. Warburton said that that was clear from A, but then going to B – the definition is not written very well. Lewis and Lysaght agreed, but Lewis stated that this is written to deal with, in his knowledge, expanding living space, dwelling space, where an extra bedroom or bathroom is needed. To him, this part doesn't have anything to do with accessory buildings or garages or barns or whatever. Warburton said yes, but it acknowledges or implies that garages are… Lewis said yes, but that is more like a condo, with boat houses that cannot have detached residential extensions; it is not allowed to put living space above a boat house, but you can put it above a garage. Warburton stated that in this case, the barn is not the living space above a garage, it's the garage itself.

Lysaght asked Cypher if he wanted to expand at all the chart that he has on precedent. Were all these consistent with the detached residential extension? Cypher replied yes, they included a wide range of approvals. Freeman asked if Item 4 in the definition given by Cypher of detached residential extensions cover the type of building under discussion tonight, bedroom/office/workshop, related to a one family dwelling? Warburton stated that it was discussing that in the context of being above a one-story garage. Lewis stated that, in his opinion, in residential space you have living space, where people are dwelling, opposed to non-living space, so all the things that would be considered accessory buildings, utility buildings, garages, workshops, sheds, boat houses, etc., are very specifically not dwelling spaces. Lysaght stated that this is why kitchen space is not allowed, so that it cannot be rented out. Lewis stated that the difference between working there and everything else, versus living there. To him, detached residential extension is intended to extend the living space aspect of the ordinance, and what was missing or got left out was all the other accessory buildings/structures and their allowed sizes, plumbing, etc. That is why the board is here tonight and what is being debated.

Cypher stated that two members of legal counsel was present from the plaintiff in the case, Robert Parker and David Puskar. In a perfect world they would have spoken first, before the board began deliberations. But the board needed to get the basics down, and he left it up to the chair to decide when to allow the legal counsel to speak.

Robert Parker said that the board had put their finger on it when they said that what the ordinance was contemplating was a kind of sleeping quarters or something above a garage, and that's how Judge Powers read it too. Powers discussed this issue in the transcript of the trial, although at the last session of the ZBA, the board concluded that accessory dwellings were permitted and this was an accessory dwelling. The board corrected Parker that the term was "accessory building", not "accessory dwelling". This was what Judge Powers needed to address, and since he said that accessory buildings were not permitted, he didn't need to get into the issue of whether this was an accessory building or whether or not it was a detached residential extension. Powers remanded it, apparently under some concept that the board could find that it is a detached residential extension, but Powers feels that this would be a strain, because the ordinance is clearly contemplating some sort of sleeping quarters or work quarters above a detached garage and not what is up for discussion, which is a pole building. Ms. Cowell has started the process of filling the gap that has been left in the ordinance, with the omission of accessory buildings. And so the process has been started to adopt to the ordinance to specifically allow those. Without something like that, it is like the Wild West, there are not, other than setbacks, lot coverage, the general regulations, anybody can do anything in terms of accessory buildings. Parker's clients think it would be a stretch to classify this structure as a detached residential extension. This is not just his opinion, but looking at Judge Powers thoughts, he was having trouble hammering that square peg into a round hole. Parker gets the sense that the board is having trouble with that too.

David Puskar stated that he was representing the Dietzel Trust, which owns the property. He submitted some documentation that was part of the record at the last hearing but he didn't see in the packet for this meeting. He wanted to make sure the board had a complete record in light of what could be going on after this. These documents included correspondence on the residential extension section, and also some case law that was discussed last time about historical uses. If the ordinance is ambiguous, if there is confusion in the language of the ordinance, the board has broad discretion to look back at what's been historically done and allowed, which in this case is very relevant in making a determination. He wants the record to be complete. There is also the original land use permit application, which was seen last time, which includes the survey and the approval. He asked that this be part of the record.

Puskar stated that he disagreed with Parker in that he doesn't think that Judge Powers made any finding whatsoever on whether the detached residential extension section applies here or not. Powers very expressly, especially at the end of his opinion, talked about the detached residential extension and looked at different aspects of it. Powers very expressly said "I'm not going to decide that issue. That's for the ZBA to decide." Puskar stated that the next part of this is the long history of garages, pole barns, detached buildings being permitted in the township. Nobody disputes that. In order to read the ordinance to say that this particular building would not be allowed, the board has to completely ignore subparagraph 1 under the detached residential extension section, which clearly contemplates a detached garage. The board would also have to look past subsection 3, which talks about supplemental space, for office/workshop related to a one family dwelling. Puskar introduced Mr. Dietzel, who will be talking about the building, refreshing everybody's memory from the last meeting. At that meeting, what was being focused on by Ms. Roman was the size of the building and its unsightliness and all of those things. Puskar reminded the board that those may have been the reasons the case ended up here, but one thing that is clear, this is a pole structure like many others. Large in size, but according to the ordinance, particularly Section V.6, the only size restriction on buildings is that 30% number, and this lot is clearly under that. Although it can be called a pole barn, that is just a type of construction. No one is

saying that it doesn't meet building codes or something of that nature. It's clearly a properly constructed building. He doesn't disagree that the ordinance is a bit confusing, and he doesn't disagree that there may have been some language about accessory buildings that was left out, but what is known is that under this exact language under Section V.5, many, many, detached buildings of many types, regardless of whether they had space on the second floor, have been approved. And when we look at this, we know and see that it is contemplating a detached garage. Michigan case law is quite clear that when there is an ambiguity in the ordinance, a board can look at past history. This is a building that was submitted, approved and had construction started and completed, and it was only after that that it was brought before the board to rehash this.

Vaughn Dietzel stated that he built the barn and got final approval on it. It contains a bedroom and a bunch of stuff related to hunting and fishing. It has a workshop, with bunks, pool table. This is the property that he lives on, for his own personal use, it isn't for hire of any kind. He does some woodworking. There is a loft space with toys and watersports equipment. Puskar stated that this is a detached garage with an upper floor that he is using as supplemental space, that is used as a workshop and related to private one-family. This building was approved originally, and it is now back before the ZBA. The judge focused on the term "accessory building", but this is a matter of semantics. This is a detached residential extension, with Mr. Dietzel's representations about what it's used for, and this is a repetition of what was discussed at the last ZBA hearing on the matter. It is still a workshop/office, as well as the additional storage area in the loft with enough room to walk around. To Puskar, this falls clearly within the definition of a detached residential extension. He disagrees with Parker, and thinks that the definition is not strained at all, and in respect to the ambiguity, Michigan case law is clear that the board can look at past history, including all of the history that Cypher provided in his staff report. Puskar is in agreement with Cypher's report, that the building could be approved as a detached residential extension under this section of the ordinance. And if the ordinance is amended in the future, that's great too. But that has not been done yet, and these kind of amendments can be difficult and political. His position is that this building clearly qualifies as a detached residential extension under the current ordinance.

Freeman stated that he doesn't understand what Judge Powers stated that accessory buildings are not permitted in the R.2 zoning district, and yet they clearly are. Lewis stated that he said that because under the current ordinance, it does not say "accessory buildings." At the last meeting, it was determined that everything was compliant. He wanted clarification that, if Cypher had worded the permit to say "detached residential extension", this would not have happened? And now the judge has said that he is reversing the decision and seeming to say that it was called the wrong thing. If the board tonight agrees to white-out "accessory building" and put in "detached residential extension", then the judge is happy and everybody's happy and what has to happen to clean up and correct the ordinance. Lewis asked if it was more complicated than this?

Figura replied that he doesn't think Powers stated that this is a detached residential extension – he did not decide either way. Powers remanded it back to the township, and if the township wanted to consider it as a detached residential extension they can. Lewis asked, so then it's up to the board to determine whether this is a detached residential extension? And if they do determine that, everything is legal? Lysaght stated that Powers is saying it can't be an accessory building, because there is no such definition in that section. So it's an error of law. Lewis stated that if everyone on the board is comfortable with what these buildings are called and have been called, is this an extension? Lysaght

stated that this is the question. Is a detached residential extension absolutely the same thing as an accessory building? Lewis quoted the National Park Service in the creation of Sleeping Bear Dunes National Lakeshore, which stated a "residence and all related accessory buildings". So, a single family dwelling is one house. And any and all related accessory structures, no matter what size, shape and use. That is the foundation the NPS uses for everything within the Sleeping Bear Dunes. He feels the board is asking the same thing. They are not asking what the house is, they are talking about whether any detached structure, regardless of size or use, is an accessory building. Lysaght stated that the NPS statute was under a different jurisdiction. Lewis asked if that was the basis for this argument? Lysaght stated that the only way the NPS statute could be considered was if it was the foundation for the Glen Arbor ordinance.

Lewis argued that in the past, all additional buildings besides the one-family dwelling have been considered accessory buildings, including garages, pole barns and utility buildings. All of these names have been used. It's a Catch-22, because if a list is made, now there are buildings in the township that are 40'x40' with nothing but firewood underneath them. What is that called? Lewis would call it an accessory building, a roof and four walls that is used to cover firewood. To him, all of those structures that meet setbacks, size/height requirements, etc., and are all controlled by the same criteria. He asked why we are considering all of these different terms in the ordinance, in the first version of the ordinance, the third version of the ordinance, why were some left out or added.

Warburton stated that in the same document, in the Recreational Zoning, the term accessory building is used. It is not used in the same document where it talks about Residential 1 and 2. That's why the board is here. Figura stated that that's why the board has to deal with what the ordinance currently says, and what it said when the application was first considered by the ZBA. When the application was first considered by the ZBA, what was in the ordinance was "detached residential extension. What Judge Power did is said that accessory building is not used in the Residential section of the ordinance, and so he reversed the decision and sent it back to the ZBA. And he did not/would not decide what is a detached residential extension, instead he sent it back to the ZBA and said that if the township wants to consider this as a detached residential extension, then he remanded the decision. ~~Warburton~~ Lewis stated that he understands this, and if the Zoning Administrator is comfortable saying this is a detached residential extension and issuing the permit, he thinks that as a board this doesn't sound complicated. If everyone decides that this is what they want to call it and what the ordinance currently says it has to be called in order to make it compliant, then he thinks it makes sense, given past and present and the historical record. If there are other dots that say there is additional work to do, Warburton thinks that it can be part of the motion tonight that the ZBA strongly recommends that the Planning Commission puts this thing to the top of their list and cleans this up as fast as possible. The ZBA doesn't want to be back here a year from now with another case here because somebody called an accessory building the wrong thing. He guarantees that the list of included buildings will never be long enough. Cell towers weren't included, cable tv was not around. Over the last 50 years, the ordinance has been made thicker and thicker and to have every word meet every definition of structure and every kind of building and etc., that'll never end. He wants to make sure that this is as simple as he thinks it is. If it is more complicated, someone needs to bring him up to speed.

Lewis stated that if the permit were re-issued, changing the name from accessory building to detached residential extension, will that work? Cypher stated that that may not solve the problem of the perception of Ms. Cowell. Mr. Parker and Ms. Cowell have every right to appeal any decision the ZBA

makes tonight back to the court. So it may end up going back to court anyway. Lewis stated that whichever way it goes, someone will likely appeal it. ~~Warburton~~ Lewis stated that his concern is that the board follow the ordinance to the best of their abilities. The Zoning Administrator absolutely did his job the way it should be done, and as this thing has worked its way through the system, which is supposed to do – people don't have to agree – that's why it goes to the next level, why it's thrown to the court and removed from the local level. He doesn't see anything that has boiled to the surface that says there's been any inconsistency or violated any past or present protocol, so he wants to support that record, and what everybody chooses to do after the board meets tonight is up to them. Cypher stated that in his staff report there was an error made, but given Lewis' question of whether the permit could be re-issued as a detached residential extension, his answer would be yes, it could be re-issued. Based on what the judge has stated, that's how the process would work.

Freeman asked if it would be permissible to ask the petitioner what her goals are in this case? Cypher stated he didn't think it was relevant, but he deferred to legal counsel. It's not the purpose of what the board is discussing tonight; tonight is about addressing the court order. Figura stated that he agreed with Cypher that the petitioner's goals are not relevant.

Lysaght appreciates that the building meets the space limitations in the zoning ordinance. She is interested in whether, looking at Cypher's chart, this building is unique in size. The board is trying to decide whether this is a detached residential extension, and she is interested in knowing whether some of the ones that were approved – she thinks this goes back to the board's perception of what this type of building is, going back to the comments on common sense. She asked if the ones on Cypher's list were mostly accessory buildings under detached residential extensions? Cypher responded that none were approved as detached residential extensions.

~~Warburton~~ Lewis stated that speaking as a former Zoning Administrator speaking on behalf of the record, that permit form is a blank and it can be filled in as the ZA wishes. It can be filled in with house, garage, boat house, pole barn, etc. The ZA isn't going to write in "detached residential extension". Cypher stated that, also, the application stated very clearly "pole building". Pole building is not in the definitions either. That is a type of construction, not a use. His error was in not putting "detached residential extension" or "garage". He feels it does meet the definition, and thinks that, when looking at his staff report and the definitions, a garage is not defined by the ordinance. Black's Law Dictionary does define garage, and that quote is in the staff report. In the staff report quote of Black's Law, an accessory building is "A building separate from but complementing the main structure on a lot, such as a garage." The township's restrictions, and he noted this in his initial review of the ordinance when he started with the township, leaves them exposed to lot coverage in residential districts. There is nothing to define what this is, given what Cowell brought forth. Most other townships have restrictions in place along those particular lines. They would most definitely have a definition of accessory building in the ordinance. He doesn't know of another township that doesn't have accessory buildings in their zoning ordinance. As far as he can tell, it was an oversight, because it's been there every place along the way, and lot coverage has been the determination of size.

Freeman asked if, in this case, the building did qualify under lot coverage. Cypher stated that it did. ~~Warburton~~ Lewis stated that historically, when things about size came before the boards, Glen Arbor has chosen to take the position to try to not over-regulate. There are not size restrictions on boat houses, but there can't be 12-car garages. Size is controlled by height, setbacks, etc. That might not be

what everyone wants to do in the future, but there are numerous places in the township where people have buildings that big or bigger in a backyard and nobody cares. That may not be something that is wanted as a trend or pattern, but in the past, when those things have been challenged, there has been tremendous concern about making those restrictions. Literally telling someone how big their workshop can be, how big their barn can be or whatever, at least historically. But that's not part of this. It may be that what's between the lines may be what needs more work.

Lysaght stated that it does boil down to the zoning ordinance and decisions that were made as far as how to structure the zoning ordinance. This is mentioned on page 4 of the staff report, and it does play a role.

Sickterman stated that she works and writes zoning ordinances regularly, and as someone who has come in halfway through the process, she looked at the ordinance and had some thoughts. Regarding the section on detached residential extensions, she thought that it was a really nice idea and something she wanted to use in other ordinances because it's a question that comes up all the time. Someone has a garage or outbuilding and wants to use part of it as a bunkhouse or another use that's not strictly storage. An extension of the residential use from the dwelling to an accessory building. She likes the way, in concept, that it was included in the ordinance. However, it is a further allowance for use of a building, not necessarily allowing an accessory building. In the list of things that can happen in the R-1 district, single-family dwelling and home occupation are listed. Home occupation is telling you one of the things you can do in your single family dwelling. It's not, in and of itself, a separate building that you could build. And the detached residential extension concern can be looked at in the same way. It was very clear to her that there was something missing, that there should be something that says a person can have an accessory building, but it's not there. When her group went to the Planning Commission with the proposal to insert that, there seemed to be clear consensus from the PC that that was indeed missing. Their proposal wasn't to take detached residential extensions and morph that into accessory building, it was to separately allow accessory buildings and then under residential extension explain that within an accessory building you can have a residential extension. They are two completely different things, and as much as it is convenient to pound that round peg into a square hole, it undermines the ordinance to simply say, "well, of course we meant that – we meant to allow accessory buildings." Accessory buildings are clearly in other districts, and not in Residential, and it could be argued that it wasn't intended, that accessory buildings were never intended to be in these districts, and where they did pre-exist, a residential use could be extended. And that argument could be made just as easily as the argument that it was intended that it be allowed.

Warburton stated that it should be acknowledged that there is also an implied ~~intension~~ intention that a detached garage is permitted, because it talks about this space as being above a garage. He agrees with Sickterman on her analysis. Sickterman stated that this could also be an attached garage. Warburton corrected that the detached residential extension section specifies a detached garage. But it clearly implies that a one-story garage detached from the residence would be part of the intent. It could be argued that accessory building was intentionally left off, and that is possible, but it has to be acknowledged that it does include, specifically, a one-story garage detached from the residence.

Lysaght stated that the argument Sickterman was making was that accessory buildings could have been specifically left out of the R-2 district. Sickterman stated that this is correct, the argument could be made that accessory buildings were specifically disallowed and that this extension would have been

allowed in pre-existing accessory buildings. Warburton stated that another whole discussion could be had about whether this building is a garage or accessory building, it's a big garage.

Lewis stated that he thinks the wording is good and applies to detached living spaces, when bedrooms/bathrooms are incorporated in a workshop above a garage building. That's always been a part of everything that's taken place in the ordinance, regardless of time. The irony is that if everything is done under one roof it's totally compliant, but the instant you detach any part, then that's different. It shouldn't be different, it's the exact same thing. It's semantics if it's under one roof or multiple roofs. He thought that Sickterman was saying there was some validity to having that in the current ordinance. How things that have always been in the ordinance, that are almost a cornerstone of the ordinance, somehow got left out, are two separate pieces. There was no intent to connect and suddenly call them the same thing, just a matter of clearing up the ambiguity or something that is missing from the ordinance.

Cypher stated that something to remember is that the decisions that were made previously must be given some credence – that this is the historical use. He stands by his decision that, as stated in his staff report, he would approve this as a detached residential extension because it is a detached garage with a loft area, with the type of uses that are defined. It's not perfect, but when things are ambiguous, there should be some credence given to the historical record of what's been there, and the decision that was made by the Zoning Administrator.

Lewis asked to clarify that this was all the judge was asking for, because the wrong word was put in the permit. If it was just corrected, then it would be completely compliant with the ordinance. The judge is asking whether or not the building is permitted if that's what the board calls it. And if the Zoning Administrator says before, during and after that it is, everything that has been done all these years says it is, then is there anyone at the meeting that doesn't think it is?

Lysaght asked if Lewis was calling the question? Lewis stated that he was trying to finish the discussion. Warburton said that he agreed with the important parts of what Lewis said, but he doesn't think the judge said it would be fine if it was a detached residential extension. Cypher stated that this could be litigated, and Lysaght and Warburton agreed. ~~Warburton~~ Lewis stated that it is the board's decision whether or not it would be permitted as a detached residential extension – that's all the board has to do tonight. All of the discussion tonight is necessary, but all the board has to do is decide that question. But the board has taken two hours to do something that used to take five minutes, but that's all that has to be decided.

The board asked if more discussion and testimony was needed? Figura stated that it may be time for a member of the board to make a motion, to see where everyone stands.

Lewis asked if he was allowed to make the motion? The board agreed that he was. **Don Lewis moved that even though the Zoning Administrator approved an Accessory Building for Mr. Dietzel in Land Use Permit #2016-13 as noted in the record, the Zoning Board of Appeals members confirm that the disputed building is permitted as a detached residential extension as required by the Glen Arbor Township Zoning Ordinance because the zoning ordinance clearly states that detached garages are implied to be approved in the Residential Districts and the structure is directly "related to a private one family dwelling".**

The Zoning Administrator had put before the board a sample motion. This was not provided by the judge. Lewis read it verbatim. Lewis stated that he has not heard any reason to be uncomfortable with the question or worry about messing something up. The Zoning Administrator put this motion in front of the ZBA, with the support of the township's legal counsel. He doesn't see any reason to change or add to any of the wording. Lysaght quoted the portion of the motion reading "the zoning ordinance clearly states that detached garages are implied" and asked how something could clearly state that something is implied? She asked counsel if he was comfortable with this language. Cypher stated that the reason for the sample motions is a request from the ZBA to at least put something down so that the board would not be struggling to create wording at the meeting. Figura stated that the language in the motion is appropriate.

Warburton seconded the motion.

It was asked if this was the appropriate time for public comment on the topic; the board determined it was. Jeanine Dean commented that it was not reasonable to say that when the new zoning ordinance was created, the people that wrote it just forgot about accessory buildings in this residential area. She doesn't think that they forgot about it, she thinks that it was left out on purpose. Lewis stated that when Residential 1 and 2 are looked at, the general statement of purpose is that everything that is allowed in Residential 1 is allowed in Residential 2, with some exceptions, and that's one of the things that is allowed. The board corrected that accessory buildings are not allowed in these areas, and that is the argument that Sickterman was making, that it may have been left out intentionally.

Cypher reminded the board that public comment is public comment, and they should listen and not have interaction. It can get off-topic. But it was on the agenda to have a public comment.

A roll call vote was taken. **In favor: Pam Lysaght, Bill Freeman, George Quarderer, Don Lewis, Harvey Warburton. Opposed: None.** Lysaght stated that she agrees with the Zoning Administrator that this case fits the definition of detached residential extension, but that accessory buildings and detached residential extensions have different definitions. In her view, this building meets both definitions. Warburton supported due to historical practice, and this motion being consistent with precedent. Quarderer asked about the difference between accessory building and detached residential extension, as he could not find uses by other jurisdictions of detached residential extension. He has no strong feeling on the subject. Accessory building is often used to talk about buildings, with a number of qualifiers to determine size, shape, location, etc. The board stated that this is up to the Planning Commission to determine, and this is the problem with the current zoning ordinance.

Freeman stated that the request for a title change (from accessory building to detached residential extension) has been granted. Cypher will amend the permit to allow a detached residential extension.

OTHER BUSINESS: ZBA By-Laws Draft (Review and approve if appropriate) – In the interest of time, this will be discussed at the next meeting. The board discussed when the minutes would be available for approval.

PUBLIC COMMENT: None.

ZBA COMMENT: None.

ADJOURNMENT: **Lysaght moved to adjourn the meeting, Warburton seconded. All in favor.** With no further business, Bill Freeman declared the meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Dana Boomer

Recording Secretary