

MEMORANDUM

To: Members of the Garfield Township Zoning Board of Appeals
From: Ross A. Hammersley | Olson & Howard, PC
Date: June 18, 2025
Re: ZBA Appeal No. 2025-01 (K. Boyd) Concerning 1661 Lake Drive

This memorandum supports and supplements the Staff Report from the Zoning Administrator, Mr. Mike Green, in the zoning appeal filed by Township resident Ms. Kathy Boyd on May 6th pertaining to the property at 1661 Lake Drive.

Background

This appeal follows a previous appeal filed by Ms. Boyd last year pertaining to the same property, and as you may recall, the outcome of that appeal process was the decision made by this body at your September 19, 2024 meeting to suspend the Land Use Permit issued to the owner of the subject property until certain issues were adequately resolved to the Township's satisfaction.

As you can see on the Appeal "application" document filed by Ms. Boyd (as well as in the analysis provided in the Staff Report's "Responses to Appeal") there are two primary bases to this appeal:

1. Decision to "uphold" the soil erosion and sedimentation control permit issued by Grand Traverse County despite ongoing zoning violations and work performed without a permit on the subject property; and
2. Decision "to not enforce" Township ordinances or the "ruling" of the ZBA from 9/19/24, specifically identifying the following:
 - a. Ordinance No. 49 – Storm Water Control Ordinance; and
 - b. Zoning Ordinance Sections 515 ("Fences and Walls") and 535 (Riparian Buffers).

Analysis

It is important at the outset of the analysis of this appeal to review the scope of authority this body is empowered to utilize. Under Michigan's Zoning Enabling Act, specifically Section 603, a zoning board of appeals has the following powers:

- (1) The zoning board of appeals shall hear and decide **questions that arise in the administration of the zoning ordinance**, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals. The zoning board of appeals shall also hear and decide on

matters referred to the zoning board of appeals or upon which the zoning board of appeals is required to pass **under a zoning ordinance adopted under this act**. It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with **enforcement of a zoning ordinance adopted under this act**. For special land use and planned unit development decisions, an appeal may be taken to the zoning board of appeals only if provided for in the zoning ordinance.¹

Each of these provisions limits the ZBA's authority to rule on the implementation of ordinances solely to the Township's Zoning Ordinance itself. Other Township ordinances regulating the use of property that are not part of the Zoning Ordinance would therefore be outside of the authority of the ZBA.

As referenced above, the first issue Ms. Boyd is appealing relates to the permit obtained by the owner of 1661 Lake Drive pursuant to what was then Grand Traverse County's Soil Erosion & Sedimentation Control Ordinance. As indicated in the Zoning Administrator's Staff Report, the Township has recently obtained authority over soil erosion & sedimentation control permits within the Township's jurisdiction. However, regardless of whether one focuses on the County ordinance under which the permit was issued or the new Township ordinance governing the issue generally, neither of those ordinances are the Garfield Township Zoning Ordinance, nor do they derive their exercise of authority from the Zoning Ordinance. Furthermore, although Section 19 of the Township's new "Control of Soil Erosion and Sedimentation Ordinance" (Ord. No. 78) refers to the Township's Zoning Department as the "municipal enforcing agency," that is not the same as Ordinance 78 being a part of the Zoning Ordinance. Therefore, as to Ms. Boyd's appeal of the "decision to uphold Soil and Erosion Permit," this appeal must be denied as the Garfield Township Zoning Board of Appeals does not have jurisdiction or authority over the implementation and/or violations of soil erosion and sedimentation control matters within the Township.

The second part of Ms. Boyd's appeal focuses on the speed of implementation and an argument that the Township is not upholding the September 19, 2024 ZBA ruling in two particular respects; first, failure to comply with the Township's Storm Water Control Ordinance (Ord. No. 49), and second, failure to comply with sections 515 and 535 of the Zoning Ordinance. As to the first allegation pertaining to the Storm Water Control Ordinance, this issue suffers the same deficiency as the soil erosion control issue discussed above, namely, that the appeal seeks to have the ZBA exercise authority over the enforcement of the Township's Storm Water Control Ordinance. However, enforcement of that ordinance (which is separate and apart from the Township's Zoning Ordinance) is designated under Section 12 of that ordinance as follows:

Any person aggrieved by the action or inaction of the enforcement agent related to this ordinance may appeal to the Grand Traverse County Construction Board of Appeals.²

¹ MCL §125.3603(1) (emphasis added).

² See Charter Township of Garfield (Michigan), Storm Water Control Ordinance, Ord. No. 49, Section 12 (adopted June 1, 2007).

Based on the ordinance at issue (a) being separate from the Township Zoning Ordinance, and (b) having a specific provision providing how and where an aggrieved party may seek enforcement of the ordinance, it is clear that the appeal requesting the ZBA to enforce this non-zoning ordinance must also be denied as being outside of the jurisdiction of this body.

The final grounds for appeal as stated in Ms. Boyd's appeal documents are the allegations relating to "noncompliance" with Section 515 ("Fences and Walls") and 535 ("Riparian Buffers") of the Township's Zoning Ordinance. As referenced on the Staff Report, neither of these sections were included within the Sept. 19, 2024 ruling issued by the ZBA. This office supports the interpretation of the Zoning Administrator with respect to the application of the language of those sections of the Zoning Ordinance, which do allow for such structures in setback areas provided they do not exceed certain height limitations as provided. The decision not to include this issue as a part of the September 19, 2024 ruling could theoretically have been appealed at that time, but since it was not the appeal seeking enforcement of these sections of the Zoning Ordinance is both inapplicable and untimely. Therefore, as the language of the Zoning Ordinance allows for the activity observed on the premises, and as these sections of the ordinance were not included in the 2024 ruling and that decision was not appealed, this portion of the appeal should be denied.

Conclusion

The appeal under consideration seeks to have this body enforce ordinances other than the Township's Zoning Ordinance, which is outside of this body's jurisdiction. The appeal also seeks enforcement of sections of the Zoning Ordinance that are not presently in violation. Therefore, the appeal should be denied. That said, continuing enforcement of all relevant Township ordinances remains ongoing as it relates to this particular property, as the Township seeks to diligently and reasonably bring this property into compliance.

Potential Motion

I move to accept the recommendations of set forth in the Zoning Administrator's Staff Report and in the memorandum pertaining to this appeal provided by the Township's legal counsel, and to therefore deny the appeal from Kathy Boyd of 1669 Lake Drive for the reasons stated in those documents.

If you have any questions or concerns about this memorandum, or wish to discuss any aspect of this matter, please feel free to reach out by email to ross@envlaw.com or by phone at (231) 946-0044. Thank you.