STATE OF MICHIGAN

COURT OF APPEALS

FLOYD C. KOPIETZ and JOAN M. KOPIETZ,

Plaintiffs-Appellees,

v

THE CITY OF THE VILLAGE OF CLARKSTON and THE CITY OF THE VILLAGE OF CLARKSTON ZONING BOARD OF APPEALS,

Defendants-Appellants.

UNPUBLISHED
May 6, 1997

No. 185309
Oakland Circuit Court
LC No. 93-467476

Before: Taylor, P.J., and McDonald and C. J. Sindt*, JJ.

PER CURIAM.

Defendants appeal by leave granted from a circuit court order reversing their decision on plaintiffs' request for a change in use. Defendants argue their decision was properly supported by the language of the statute and by public policy. We reverse in part and remand for further proceedings.

Disposition of this case first requires us to determine the meaning of the term "structural alterations" as it is used in the Village of Clarkston zoning ordinance. The meaning of a term in a zoning ordinance is a question of law. When the question of law is the construction of an ambiguous ordinance, the constraints of the rules of statutory construction apply. *Macenas v Village of Michiana*, 433 Mich 380; 446 NW2d 102 (1989). Because there is no evidence in the record regarding construction of the ordinance over time, we will afford the zoning board's construction of the ordinance "respectful consideration" rather than great weight. *Id*. at 402.

The relevant portion of the ordinance reads: "No existing structure . . . shall be . . . structurally altered except in changing the use of the structure to a use permitted in the district in which it is located." City of the Village of Clarkston Zoning Ordinance, § 910(4)(a). Although the ordinance does not define "structural alterations" defendants suggest the zoning ordinance's separate definitions of the words "structure" and "alterations" can be combined to show plaintiffs' proposed changes are "structural alterations." We disagree. While the definitions of "structure" and "alterations" may allow

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* Circuit judge, sitting on the Court of Appeals by assignment.

the board to determine when a "structure" has been "altered," they do not define when a structure has been "structurally" altered. Essentially, defendants' argument would make the word "structurally" superfluous. When construing a statute, every word should be given meaning and, as far as possible, no word should be treated as surplusage or rendered nugatory. *In re Walther Estate*, 205 Mich App 566; 517 NW2d 841 (1994).

Where the meaning of a term in a zoning ordinance is not defined in the ordinance, this Court should normally look to the intent of the legislative body enacting the ordinance. *Macenas, supra* at 400. However, where, as here, there is no legislative history in the record, we may look at the ordinance as a whole in order to derive a reasonable definition of the term. *Id.* at 400-402. In construing the term "structural alterations," we are also guided by our Supreme Court's decision in *Paye v Grosse Pointe*, 279 Mich 254; 271 NW 826 (1937). There, the Court found the term "structurally altered" meant "the city council intended to prohibit such a change as would convert an existing building into a different structure." *Id.* at 260.

Reviewing the Clarkston ordinance, we find no reason to adopt a significantly different definition here. The ordinance contains a statement of intent which indicates legal nonconforming uses are permitted to continue, but their survival should not be encouraged. See City of the Village of Clarkston Zoning Ordinance, § 910.01. In addition, the ordinance contains a number of sections which clearly indicate nonconforming uses may not expand in any way. See City of the Village of Clarkston Zoning Ordinance, §§ 910.02-910.05. With these sections in mind, along with our Supreme Court's interpretation in *Paye*, we find a structural alteration is any change in an existing structure which would expand the size of the structure, significantly change the outside dimensions of the structure, or which would effectively convert the building into a different structure. Although this definition might permit changes members of the construction trades might consider "structural," we believe it appropriately embodies the intent of the ordinance's drafters.

Applying this definition to the facts of this case, we find plaintiffs' proposed changes do not constitute "structural alterations." The changes will not enlarge the building or change its outside dimensions. The interior changes will simply turn a number of large sitting rooms into smaller rooms with baths. The upstairs and basement levels will remain unchanged. The changes will not convert the building into a different structure. The circuit court correctly concluded defendants' findings with regard to this issue were not supported by competent, material and substantial evidence.

Determining plaintiffs' proposed changes do not constitute "structural alterations" does not in and of itself answer the question whether the zoning board erred in denying plaintiffs' requested change in use. Ordinance section 910.04(3) provides[1]:

> If no structural alterations are made, any non-conforming use of a structure, or structures and premises, may be changed to another non-conforming use provided that The Board of Appeals, by making findings in the specified case, shall find that the proposed use is more appropriate to the district than the existing non-conforming use.

Because defendants rejected plaintiffs' requested change in use based on its position the proposed changes to the building constituted "structural alterations" the question whether the proposed use is more appropriate to the district than the existing non-conforming use was not addressed by defendants in this case[2]. A determination whether defendants improperly denied plaintiffs' change in use cannot be made until this issue is decided. We, therefore, remand to the zoning board for consideration of this issue. After applying the appropriate standards (see *Kopietz, infra,* n 2), if the board determines the proposed use is more appropriate, the board shall grant plaintiffs' petition for change in use.

Remanded. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, a question of public policy involved.

/s/ Clifford W. Taylor
/s/ Gary R. McDonald
/s/ Conrad J. Sindt

[1] This language is found in the parties briefs, neither party has provided a copy of the ordinance.

[2] Although we note defendants addressing whether plaintiffs' proposed use would be a more appropriate use in a separate case, concluded the proposed use was not more appropriate, this Court in *Kopietz v Zoning Board of Appeals for the City of Clarkston*, 211 Mich App 666; 535 NW2d 910 (1995), found defendants did not utilize the proper standards in reaching its conclusion. Although the matter was remanded to the zoning board, the parties in the instant action indicate no action has been taken by the board because they are awaiting the outcome of the instant case.