

**MICHIGAN CONSTRUCTION CODE COMMISSION
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF CONSTRUCTION CODES
P.O. BOX 30254
Lansing, MI 48909**

Joe Barbat,

Petitioner

**Appeal Docket No.
CCC-PRD-14-002**

vs

City of Orchard Lake Village,
Construction Board of Appeals

Respondent

ORDER OF THE MICHIGAN CONSTRUCTION CODE COMMISSION

Background:

Joe Barbat appeals the June 10, 2014 decision of the City of Orchard Lake Village, Construction Board of Appeals. The decision issued on June 10, 2014 is a denial of the request of Joe Barbat, appealing the City of Orchard Lake Village application of 2009 Michigan Residential Code (MRC) Section AG 102.5 (barrier requirements for an outdoor swimming pool). The subject application of the code requires a barrier around the outdoor swimming pool at the residence of Joe Barbat at 3320 Three Lakes Lane in Orchard Lake Village. The City of Orchard Lake Village, Construction Board of Appeals did not accept an electrically-operated pool cover (meeting ASTM D 1346) as equivalent to the barrier requirement of MRC Section 102.5. The appeal was heard by the City of Orchard Lake Village, Construction Board of Appeals on June 10, 2014. On June 10, 2014 a document entitled, "Minutes of the Construction Board of Appeals Meeting" was issued by the City of Orchard Lake Village.

Procedural Findings:

On consideration of the request dated June 24, 2014, from Jeffrey Leib (representing Joe Barbat), a hearing before a panel of the Construction Code Commission was held July 9, 2014, at the Bureau of Construction Codes, 2501 Woodlake Circle, Okemos, Michigan in accordance with the Stille-DeRossett-Hale Single State Construction Code Act, 1972 PA 230, Section 125.1516.

Present were:

Joe Barbat	petitioner
Jeffrey Leib	representing Joe Barbat
Bob Elder	representing Joe Barbat

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Gerald McCollum	representing respondent (City of Orchard Lake Village, Construction Board of Appeals)
Thomas Baldwin	representing Construction Code Commission-Panel of Appeal
William Benoit, Jr.	representing Construction Code Commission-Panel of Appeal
Matthew Reno	representing Construction Code Commission-Panel of Appeal
Todd Cordill	representing Bureau of Construction Codes
Stanley Skopek	representing Bureau of Construction Codes
Kathy Cosgray	representing Bureau of Construction Codes

Issue:

Does an electric operated pool cover (in compliance with ASTM F1346) meet the barrier requirements of 2009 Michigan Building Code, Section AG 105.2 for residential swimming pools?

Findings:

The project in question is a new in-ground swimming pool at the Barbat residence, and is situated between the existing house and the shorelines of Cass Lake and Dow Lake. A fence is in place at the entire perimeter of the subject property with the exception of the shore lines at Dow Lake and Cass Lake. Thus, the subject property cannot be accessed except at the two lake shore lines. The property also has a gate at the driveway limiting access by land to one specific point of the property perimeter on the terraced lawn. Between the lake shore lines and the swimming pool there is a boulder retaining wall (approximately 30 inches in height) in lieu of a 48 inches high barrier as prescribed by MRC Section AG 105.2. The swimming pool has a maximum depth of 4 -1/2 feet. An alarm system is in place throughout the existing house that notifies occupants when any doors are open. Representatives of the petitioner stated that they are seeking approval of the electrical-operated pool cover as a horizontal pool barrier, since it meets the requirements of ASTM F1346. This horizontal pool barrier approval would be an alternative to barriers between the lake shore lines and the swimming pool. Further testimony by representatives of the petitioner stated that the electric-operated pool cover is strong enough to support several adults standing on it.

The respondent stated that the pool design submitted at the time of permit application included a fence barrier situated around the pool between the two lake shore lines and the pool deck. After the pool had been constructed, the petitioner sought relief from the 48 inches high barrier requirements of MRC, Section AG 105.2. The respondent enforced the barrier requirement of MRC, Section AG105.2 that calls for a barrier at the entire perimeter of an outdoor swimming pool.

Conclusions:

Per MRC Section AG 105.2 a barrier at least 48 inches high shall be provided at a residential in-ground outdoor swimming pool. Such barrier shall surround the swimming pool and comply with ten conditions listed in MRC Section AG 105.2 depending on the pool design. The primary condition that has been met at all areas except the lake shore lines is as follows:

1. *The top of the barrier shall be at least 48 inches above grade measured on the side of the barrier which faces away from the swimming pool.*

This condition is satisfied at the perimeter fence at all areas except for the lake shore lines that have no such barrier.

The subject pool cover at the Barbat Residence meets the requirements of ASTM F1346 for a pool safety cover, but not the criteria for a swimming pool barrier as prescribed by MRC Section AG105.2. MRC Section AG 105.2, states:

9. *Where a wall of a dwelling serves as part of the barrier, one of the following conditions shall be met.*
 - 9.1 *The pool shall be equipped with a powered safety cover in compliance with ASTM, F1346.*
 - Or*
 - 9.2 *Doors with direct access to the pool through that wall shall be equipped with an alarm which produces an audible warning when the door and/or its screen, if present, are opened. The alarm shall be listed and labeled in accordance with UL 2017. The deactivation switch(es) shall be located at least 54 inches above the threshold of the door.*

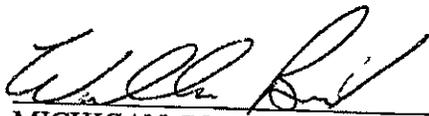
No barrier is in place around the swimming pool in a continuous layout to the subject house making its wall part of the barrier. Thus the pool safety cover and alarm equipped doors at the subject house do not meet the requirements of MRC Section AG 105.2.

Decision:

The City of Orchard Lake Village was correct in its application of 2009 Michigan Residential Code, Section AG 105.2 barrier requirements for the subject outdoor swimming pool.

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THEREFORE, it is ordered that the request for relief from the requirements of 2009 Michigan Residential Code, Section AG 105.2 be denied. This order is binding on all parties unless appealed in accordance with the Stille-DeRossett-Hale Single State Construction Code Act, 1972 PA 230, Section 125.1518.



MICHIGAN CONSTRUCTION CODE COMMISSION
William Benoit, Chairperson
Panel of Appeals

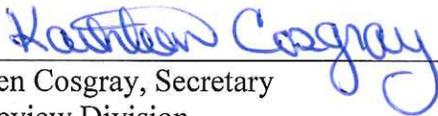
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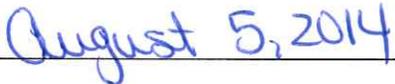
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PROOF OF SERVICE

I hereby state, to the best of my knowledge, information, and belief, that a copy of the foregoing document was served on this date upon all parties and/or attorneys of record in this matter by email to those parties employed by the State of Michigan and by first class mail to the remaining parties at their respective addresses as disclosed below.



Kathleen Cosgray, Secretary
Plan Review Division
Bureau of Construction Codes



Date

Mr. Gerald McCollum
City of Orchard Lake Village
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Farmington Hills, MI 48334

Keith Lambert, Deputy Director
Bureau of Construction Codes