

Members Present: Chair- William Harper, Board members- Gale, Cook, McCann, Ager, Conley and Cavendish

Absent: None

Staff: Joni Scott- Zoning Administrator, Ross Hammersley- Village Attorney

The Public Hearing of the Zoning Board of Appeals (ZBA):

The public hearing began at 1:00 p.m.

Chair Harper noted that he lived within 300' of the property in discussion and agreed to recuse himself for the meeting. Harper nominated Chris McCann as Vice Chair so that he could run the meeting.

Commissioner Gale Moved, Supported by Commissioner Cook to approve Chris McCann as Vice Chair. Roll Call Vote: Yeas (7) Nays (0) Motion Carried.

A. Presentation of Case:

The ZBA public hearing is being held to consider a (CR-1) Commercial/Residential property known as Yard and Lake, located at 215 N. Mill Street, Northport, MI 49670, the request is for interpretation of Article 5, Off-Street Parking and Loading, Section 5.06, which governs parking in commercial and industrial districts. The ordinance stipulates that parking areas must be effectively screened on any side that adjoins a residential district by an 8-foot buffer yard, as specified in Section 3.34. No parking area should be closer than eight (8) feet to any residential property, district, or right-of-way.

Property owners, Mr. Kevin Borsay and Ms. Shawn Santo filed a request for interpretation on August 8, 2023 and paid the designated fee of \$100.

Publication was published in the Leelanau Enterprise and all property owners within 300 feet were notified. All requirements as referenced in Act 207 of 1921 have been fulfilled.

B. Applicants Presentation:

Mr. Kevin Borsay and Ms. Shawn Santo sought an interpretation of the zoning ordinance for their property at 215 N. Mill Street. Mr. Borsay outlined their vision for the property, which includes various uses such as tables and seating, temporary mobile food concessions, wine socials, pop-up dinners, special events, and a special photo op classic car exhibit.

Ms. Shawn Santo also addressed the situation involving the complainants, Patrick and Kay. She characterized the issue as more of a mental health concern and explained that they had experienced multiple instances of harassment from their neighbors.

C. Zoning Administrator Report:

Zoning Administrator, Joni Scott, presented the interpretation request to the Zoning Board of Appeals. The presentation included the following key points:

Background: Scott provided context by explaining that property owners, Mr. Kevin Borsay and Ms. Shawn Santo, had sought an interpretation of the zoning ordinance concerning parking requirements. The primary focus of the request was Section 5.06 of the Village's Zoning Ordinance, which addresses parking in Commercial and Industrial Districts.

Site Plan Importance: Scott emphasized the crucial role of the approved Site plan in the interpretation process. She cited advice from the Village attorney, Mr. Ross Hammersley, stating that the Site plan is integral in determining how zoning regulations apply. She referenced Michigan's Zoning Enabling Act, Section 501(2), which makes approved Site plans legally binding and essential for interpreting zoning regulations.

Findings and Considerations: Scott highlighted the importance of the approved Site plan in the "Findings of Fact" section, emphasizing the need for the Zoning Board of Appeals to fully comprehend what was initially planned and approved in the Site plan.

D. Public Comment/Correspondence:

Mimi Heberleine- expressed her viewpoint regarding the parking lot and building in question. Heberlein reiterated that the building had a long history, initially serving as a noisy garage and gas station before becoming a restaurant for many years. She pointed out that there hadn't been any significant issues with the property's use in the past, and many in the community were accustomed to its presence.

Heberlein urged the Board to consider that if some individuals were seeking a quiet and peaceful environment, they might be better suited to living in a more rural area. Heberlein suggested that the complaints might have a negative impact on local businesses and requested the Board to dismiss what she viewed as a petty and unjustified complaint.

William Harper- stated that he resides three doors down from the affected property, provided a comment as a business owner. He emphasized the importance of recognizing that businesses naturally evolve over time. He cited examples of other local businesses that had made changes to their operations, such as adding wood-fired pizza ovens or mobile kitchens, without needing to resubmit their site plans. Harper argued that businesses should have the flexibility to adapt to temporary events or opportunities as part of their survival strategy.

Trustee Harper, in a separate comment, raised several points. First, he highlighted the option for the property owners to resubmit their site plan to the Planning Commission if they wanted to add or change elements of their business. He suggested that a simple up or down vote from the Planning Commission could address this issue without requiring a variance.

Second, Trustee Harper expressed concern that the violation notice had initially focused on Section 5 but was now being discussed in the context of site plan compliance. He likened this to a situation where someone received a ticket for a broken taillight but was then charged with speeding instead. He argued that the Zoning Board of Appeals should focus on the interpretation of Section 5, which pertained to prescribed parking areas, and noted that without a prescribed parking area, demanding a buffer was not justified.

Trustee Harper concluded by urging the Board to consider the views of neighbors and surrounding business owners who wished to maintain the status quo. He emphasized that the majority of the community supported this position, while a minority appeared to have a personal issue with the matter. Trustee Harper encouraged the Board to make a decision that was in the best interest of the community.

Wendy Slade- a neighbor living next door to the affected property, expressed her enthusiasm and support for the food truck and the property owners, Mr. Kevin Borsay and Ms. Shawn Santo. She highlighted that the food truck had employed her grandson during the summer, which she found to be a joyful experience.

Wendy Slade mentioned her appreciation for the food truck's presence, the delightful smells it brought, the friendly people involved, and the various events it hosted. She described how sitting on her front porch and witnessing the activities, including weddings and outdoor gatherings, brought happiness to the community. She encouraged unity and support among community members and expressed her view that the food truck was a valuable addition to the community.

Patrick Thompson- emphasized that the approved site plan included an Airstream, which was stationary and placed in the front yard. This Airstream was part of the approved site plan and had been agreed upon, including discussions about outdoor seating areas and sandboxes.

Mr. Thompson noted that the zoning issue was related to the compatibility between commercial and residential properties. He cited provisions in the village's ordinances regarding screenings and argued that these ordinances should be followed to maintain compatibility.

Mr. Thompson mentioned the existence of a survey that indicated the location of a concrete block wall on his property and emphasized that this wall was not on shared property. He also pointed out discrepancies between different surveys and documents related to this wall.

Patrick referred to zoning setbacks and how setbacks are intended to create good neighbor relations. He argued that setbacks were not meant for any structure and raised concerns about how the setbacks were being applied in this case.

Thompson also presented photographs of himself maintaining the wall and the adjacent area over a period of 40 years, highlighting his long-standing care of these elements on the property. In closing Patrick Thompson also claimed that the area where the food truck is now parked belongs to him due to right adverse possession. He argued that the removal of greenery and plantings by the property owners violated zoning ordinances related to site plan approval. Thompson expressed frustration that he was prohibited from accessing his own property to maintain the wall.

E. Questions and Clarifications from the Board:

Susan Ager- expressed her sadness about the ongoing dispute and emphasized the need for harmony and resolution between the involved parties. She understood the distress of both property owners and hoped for a compromise or mediation to address their concerns. Ager suggested potential solutions like a taller wall or relocating the food truck to the street but acknowledged her limitations in proposing specific remedies.

Hugh Cook- inquired about the distinction between a temporary and permanent structure concerning the new food truck. Zoning Administrator Joni Scott explained that the zoning categorizes a structure as something permanently attached to the ground, even if it's temporary, such as an airstream. However, the food truck does not meet this definition of a structure.

Laura Cavendish- clarified that the purpose of the interpretation request is to determine if the zoning ordinance is being applied appropriately to the situation, not to express preferences about the food truck itself. She explained that the process should refine the interpretation of the zoning ordinance. She mentioned that filing for another site plan review or a variance could be options for the property owners. She also emphasized the importance of adhering to the zoning ordinance and highlighted the distinctions between the recreational vehicle and the food truck in question.

She further discussed how parking should follow specific guidelines and that the storage of a recreational vehicle should be in the side or rear yard without being used as living quarters. She mentioned that the current zoning stipulates that the rear yard is determined by the homeowner, indicating that the side the food truck is parked on should be considered the rear. Laura also raised concerns about the absence of a driveway permit for the food truck's location and the need to follow the proper process.

Cavendish questioned the neighboring property's future use, specifically inquiring whether it was intended solely for single-family residential purposes or if there were plans to include an art studio. In response, Patrick Thompson and Kay Pentzein clarified that they are both Cranbrook graduates and that they indeed have an art studio on their property.

Laura continued her inquiry by asking if this art studio would be open to the public for sales. Patrick Thompson explained that while they would allow people to come and view their artwork with the potential for sales, it wouldn't be open to the public during regular business hours.

Laura Cavendish emphasized the significance of this designation regarding future property use, particularly whether it would remain strictly residential or incorporate an art studio. She pointed out that this distinction had a substantial impact on buffering requirements between properties and how it would influence the property's compatibility with the neighboring restaurant.

F. Deliberation:

Cavendish requested clarification from the village attorney, Ross Hammersley, regarding the scope of a decision made today regarding the interpretation of the ordinance. She sought to confirm if

such a decision would establish an interpretation of the ordinance but would not have a retroactive effect, implying that it wouldn't apply to other businesses that may have similar situations in the past?

Ross Hammersley responded that it's difficult to provide a definitive answer because different businesses may have different approvals and circumstances. He emphasized that this interpretation is meant to address a very specific and narrow issue: whether Article Five of the zoning ordinance applies. Any interpretation made here is meant for this particular case and can potentially be used as a reference in future deliberations or interpretations of the zoning ordinance. However, it wouldn't unilaterally apply to all properties. Hammersley stressed the importance of maintaining a narrow scope to avoid broad interpretations that go beyond the specific case at hand. The goal is not to start issuing numerous zoning violations based solely on this interpretation.

Susan Ager asked Ross Hammersley if he believed that Article 5 provided pertained to the situation?

Ross Hammersley responded by explaining that Article Five applies throughout the village, and when there's a site plan review process, the Planning Commission has the ability to modify requirements or make allowances for certain things. Without a site plan review, Article Five would apply as a generally applicable ordinance. He noted that some communities have specific food truck ordinances, but Northport doesn't, so interpreting how the zoning ordinance should apply in this case, given the ambiguity, is the task at hand.

Barbara Conley questioned the applicability of Laura's comments, pointing out that Article Five pertains to parking for businesses, employees, and customers, which doesn't seem to apply directly to the situation. She emphasized that the parking area wasn't part of the original site plan and wasn't envisioned initially. Conley sought a response to this perspective.

Ross Hammersley responded by highlighting the gradation in the use of parking areas. He agreed that Article Five likely doesn't apply directly to the situation at hand. Hammersley explained that different considerations and discussions would have occurred during the site plan review process if the initial plan had involved a movable food truck instead of an immovable trailer. He also noted that the interpretation is ultimately a decision for the board to make, taking into account the specific circumstances of the case.

Laura Cavendish pointed out that there is a definition of "parking area" in the zoning ordinance. According to this definition, a parking area is defined as an off-street open area primarily used for parking automobiles, whether for compensation or as an accommodation to clients, customers, visitors, or employees. The definition also includes access drives within the actual parking area. This definition helps clarify what is considered a parking area within the context of the zoning ordinance.

Laura noted that one of the issues at hand is that the zoning ordinance has been under revision for several years, and when it was initially written, food trucks may not have been a consideration. The current question is whether the zoning ordinance should apply to food trucks or not. Laura expressed her view that based on what they currently have in the ordinance, a food truck is a vehicle, and it is parked there. However, she also acknowledged that there's a valid point to consider regarding whether it is the primary use of that space.

The Board sought guidance from the Village attorney on how to proceed if they disagreed with the violation that had been cited. They were concerned about the possibility of the wrong thing being cited, and they wanted to know how to address such a situation.

Ross Hammersley advised that if the Board believed that the violation had been cited incorrectly, they should provide their interpretation and direct the zoning administrator to potentially withdraw the notice of violation. They could then decide whether to issue a different violation notice or give the property owner a temporary period to make necessary changes before initiating a new process.

G. Motion to Approve/Deny the Interpretation Request:

Laura Cavendish **Moved, Supported by** Jane Gale to direct the zoning administrator to withdraw the violation and instruct the property owners of 215 N. Mill Street to within 90 days submit a revised site plan, a variance or expanded use to address all of the uses that will be performed at the location. **Discussion:** Cavendish noted that if the 90 days isn't met than a violation would need to be considered. **Roll Call Vote:** Yeas (6) Nays (0) Abstained (1) Harper **Motion Carried.**

Adjournment:

Hugh Cook Moved, Supported by Chris McCann to adjourn the ZBA meeting.
Roll Call Vote: Yeas (6) Nays (0) Abstained (1) Harper Motion Carried.

The meeting was adjourned at 2:10 pm

Jani L. Scott, Clerk