KUHN ROGERS

May 8, 2024

Village Council and Zoning Administrator
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Re: Requested Enforcement Action Against Yard & Lake, 215 N. Mill Street, Northport, Michigan

Dear Zoning Administrator and Village Council Members:

I have been asked by Patrick Thompson and Kay Pentzien to request that the Village Zoning Ordinance ("Z.O.") be timely enforced. From my perspective and based upon my investigation and review, the Village has been untimely in seeing to it that the Z.O. is enforced timely and fairly for the benefit of all Village residents. There is an extensive history here and I point out below the items for which we request a prompt review and steps to enforce:

Important Background Information:

Kay Pentzien has a lengthy connection with the parcel now owned by her and her husband, Patrick Thompson. Her connection with the property dates back 69 years and she has a complete understanding of their property and the adjacent parcels; and the historical use and development of the parcels. I understand that this property has been passed down through her family and ultimately to her on August 23, 1985. With this in mind, we believe you will find it helpful to consider the following:

*In 1982-83 (and in compliance with the then existing Zoning Ordinance ("Z.O."), they, along with Patrick's brother-in-law (who was a master old world mason), constructed the 7' high and 100' long block wall. They did so at a time when there was a post and beam fence already erected on the current (Y & L parcel). The block wall was constructed inside of the common property line. They not only "tuck pointed" the block wall, but also trimmed, watered and nurtured the euonymus vines that grew in the fence over 40 years. From time to time, they also replaced rotten boards on the fence, re-nailed loose boards and otherwise maintained the euonymus vines so that they would not cause the fence to be destroyed/fall into disrepair.

*In 2021, Y & L took self-help measures by removing the existing "post and beam" fence/barrier. They also dug up the old growth euonymus plants (then exceeding 14' height); and then tried to retake the land area between the block wall and the former wood fence and placed substantial gravel in this area. They undertook this self-help effort in an attempt to "retake property", property then owned by my clients through the doctrines of prior acquiescence and/or adverse possession. Those self-help efforts and the concomitant use of the gravel area was also in violation of various Z.O. provisions (commented on below).

Y & L's Actions and Lack of Fair, Transparent and Timely Enforcement of the Z.O.:

Recited below are some, but not all, of Y & L's actions/activities in violation of the Z.O. The Village files are replete with information, documents and meeting minutes which disclose Z.O. violations and, from my perspective, the Village and its Z.A (which person changed from time to time) of turned a proverbial "blind eye" to Y & L's activities.

*The Airstream trailer was lying in pieces for a number of years on the Y & L parcel. Then in 2021, the Airstream trailer was converted to a bar/serving area, the existing patio was expanded, posts and a canopy were installed over the expanded patio with patio lights; and the driveway was added and planters were moved into the road right-of-way. So far as I can determine, all of these activities were not approved by the P/C and/or identified on Y & L's site plan.

*On July 1, 2023, a food truck (aka The Taqueria) appeared and was placed into business at Y & L in a self-designated location, all without recognition of setbacks from the former wood fence and without Planning Commission ("P/C") site plan approval. P/C approval was required prior to Y & L undertaking its site activities.

*Upon the removal of the taco truck the end of October 2023, an old Cadillac was substituted in its place. The Cadillac (for whatever its current/intended purpose) is not permitted but is prohibited by a number of Z.O. provisions. (Equally important here is the fact that the Cadillac has been located on a strip of property no longer owned by Y & L as the historical use of the property demonstrates, whether by acquiescence or adverse possession, the property is owned by my clients.)

The Z.O. (Specifically Article 18.06(1) and (2) Required Y & L to Obtain P/C Site Plan Approval – Before Undertaking On-Site Activities:

18.06 REGULATIONS.

1. No grading, removal of trees or other vegetation, land filling, or construction of improvements shall commence for any development which requires a site plan approval until an approved site plan has been signed by the Secretary or Chairman of the Planning Commission.

2. The Zoning Administrator shall not issue a land use permit for any use requiring site plan approval until an approved site plan has been signed by the Secretary or Chairman of the Planning Commission.

*Additionally, something which should have been easily detected previously (either by the P/C as part of a site plan approval process and/or the Z.A.), it appears that Y & L has knowingly and intentionally violated the Z.O. – which prohibits "driveways to a parking area shall not be closer than eighty (80) feet to an intersection". (Please see page 42 of the Z.O.)

My Clients Have Asked Me to Specifically Request the Following:

We understand that the current Z.A. is appointed/retained by the Village Council ("V.C."); and the Z.A. works at the direction of the V.C. Given the long and unfortunate history of the Y & L onsite activity, we respectfully request that the V.C. direct the following or similar course of action:

1. Direct that the Z.A. immediately issue tickets or other formal notice to Y & L to immediately cease/terminate any land use activities in violation of the Z.O. (and that there be no P/C or V.C. consideration of any request for rezoning which, by any measure, is patently deficient on its face).

2. Direct that the Z.A. issue whatever ticket/formal notices required to prohibit/prevent all ongoing Y & L onsite activities unless and until Y & L complies with all of the controlling Z.O. provisions.

We respectfully request that the V.C. include this letter as an agenda item for the V.C. at the May 9, 2024, V.C. meeting and that this letter be included as a record in the Village files.

I am available to discuss this longstanding set of issues if someone from the Village would like to reach out to me for a candid and transparent discussion. Thank you.

Sincerely,

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ER/ljd
cc Clients (via email)