

**KASSON TOWNSHIP
ZONING BOARD OF APPEALS**

Applicant: James Schettek
244 W. Kasson Ctr
Maple City, MI 49664

Fran Seymour
1145 Hastings Street
Traverse City, MI 49686

Hearing date: October 11, 2023
Deliberations and Decision Monday, November 20, 2023

Property Owner: Bill Kasben
1175 E. Kasson Road
Maple City, MI 49664

APPLICATION FOR APPEAL OF ZONING ADMINISTRATOR'S DECISION TO DENY
REQUEST FOR SPECIAL USE PERMIT UNDER SECTION 4.7.2

The Applicants and property owner are seeking to appeal the decision of the Zoning Administrator Tim Cypher who determined on July 7, 2023 in conjunction with a letter from the township's legal counsel Thomas Grier of the same date not to allow an amendment and/or processing of a new special use permit for the applicants and owner's property which is located in the FR zoning district. The application sought a special land use permit for an Enduro motorcycle race during limited time periods in the warmer weather seasons under Section 4.72, *Public or Private Outdoor Recreation or Park Facilities* such, the proposed use constitutes a private outdoor recreation or park facility in conjunction with the definition of *Outdoor Recreation Establishment* provided in Chapter 2, Section 2.2 Definitions. The applicant requests that the ZBA rule as follows:

That the Zoning Administrator's decision based upon advice from township counsel refusing to allow for the processing and hearing of a request for a special use permit under Section 4.7.2 being a public or private outdoor recreation or park facility be reversed with the ZBA requiring the Zoning Administrator and the Planning Commission to process the application under the standards set forth for special land use permits under the Kasson Township Zoning Ordinance.

The Zoning Board of Appeals having considered all the comments, evidence and letters

submitted by the public, as well as all comments and materials submitted by the applicant and applicant's representative and attorney representing some of the citizens and the board having considered 32 Exhibits, the board having reached a decision on this matter states as follows:

GENERAL FINDINGS OF FACT

1. The property is located in the Forested District (FR) under the Kasson Township Zoning Ordinance. (See Exhibits 28 and 29).
2. On February 18, 2023, the applicants and property owner applied for a special use permit for the purpose of holding an Enduro Race on the property. Said race being for a narrow and very finite period of time. (See Exhibit 1).
3. Based upon the advice of the Zoning Administrator, the applicants sought a special use permit under Section 7.15 of the Kasson Township entitled *Other Special Land Uses* which provides as follows:

“Land and structural uses which are not specified in any other section of this ordinance, but, upon being applied for under the provisions of Chapter 7, may be considered by the Planning Commission as long as they meet all the conditions and requirements of this Chapter and the spirit and intent of the ordinance.” (See Exhibit 28).
4. The application was introduced to the Planning Commission on March 20, 2023 with the public hearing occurring on April 17, 2023 before the Kasson Township Planning Commission. (See Exhibits 2 and 21).
5. At the Public Hearing on April 17, 2023, ZBA member Scott Mills, under comments listed as a person speaking in opposition to the application as being recognized, stated that “. . . special use permits transfer with the parcel; in other words, they run with the land. There is lots of talk about selling land. He asked the PC to consider the types of racing.” (See Exhibit 21).
6. Attorney Kristyn Houle, representing some of the residents within Kasson Township, wrote three letters. One dated May 2, 2023 two more dated May 4, 2023 opposing the application for a special use permit and stating that the processing of such a permit under Section 7.15 was unlawful based upon Michigan Court of Appeals case of *Whitman v. Galien Township 288 Mich App 672 (2010)*. (See Exhibits 3, 4 and 5).
7. On May 5, 2023, Township Attorney Tom Grier wrote a letter to Tim Cypher, Zoning Administrator, opining on special use standards in the Zoning Ordinance which could not be met under Section 7.7A, B and E, (although the Planning Commission had not even begun to review these standards) stating that the SUP should not be granted absent a sound study showing otherwise. Mr. Grier's

letter further stated that his analysis of the *Whitman v Galien Township* case also concluded that the special use permit could not be processed under Section 7.15. (See Exhibit 6).

8. Township attorney Tom Grier drafted the motion which was passed by the Kasson Township Planning Commission on July 17, 2023 dismissing the application prior to any deliberations being made by the Kasson Township Planning Commission stating that it is the township attorney's opinion that the application cannot be processed under state law as Section 7.15 of the Kasson Township Zoning Ordinance was invalid. (See Exhibit 14).
9. Applicants, through the assistance of their attorney Peter Wendling of Young, Graham & Wendling, P.C., requested of Tim Cypher, Zoning Administrator, the processing of a Special Use Permit under the Forested District (FR) being a special land use under Section 4.7.2 for Public or Private Outdoor Recreation or Park Facilities. This request was pursuant to a telephone call to Mr. Cypher as well as correspondence from Attorney Wendling's office. (See Exhibit 12). It is the applicant's/landowner's position that a special land use should be processed by the Kasson Township Planning Commission under Section 4.7.2 *Public or Private Outdoor Recreation or Park Facilities* given that the Zoning Ordinance also has a definition of *Outdoor Recreation Establishment* which reads follows:

“ . . . is a facility designed and equipped for the conduct of sport, amusement or leisure time activities and other customary recreational activities outdoors, (outside of an enclosed building) and operated as a business and open for use by the public for a fee such as tennis courts, archery ranges, golf courses, miniature golf courses, golf driving ranges, and children's amusement parks.” (See Exhibit 28).

10. Section 2.1 of the Kasson Township Zoning Ordinance provides rules for text application including provisions under Section 2.1 I and J which state “that the particular shall control the general and that terms not herein defined shall have common, customary meanings.” (See Exhibit 28). Applicants and property owner also suggested through their attorney that an application for the proposed use could also be submitted under Section 5.13 of the Kasson Township Zoning Ordinance entitled *Temporary Outdoor Uses*. The first paragraph being germane to the application which reads as follows:

“Temporary Outdoor Uses may be permitted in any zoning district provided that the temporary use is similar in nature to those uses that are allowed by right in the district. **Any other temporary outdoor uses require a review by the Planning Commission and my require an approved site plan at the commission's discretion in accordance with Chapter 8.**” (Emphasis added in bold) (See Exhibit 28).

Mr. Grier, township attorney, provided additional correspondence to the Zoning

Administrator stating that Section 5.13 cannot be utilized to process an application for the proposed Enduro Event because the first sentence mentions that the proposed use is “not similar in nature to those uses that are allowed by right in the district.” However, Mr. Grier’s letter did not address the important part of Section 5.13 with respect to this application that any other temporary use can be processed subject to Planning Commission review and at their discretion, a site plan under Chapter 8 of the Zoning Ordinance. (See various correspondence from Attorney Grier being Exhibits 5, 11 and 13).

11. Mr. Cypher has also forbid applicants and property owner from applying to the Zoning Board of Appeals to have the proposed use classified as a use not listed, although it appears that under Section 4.7.2 an Enduro use as proposed by the applicants and as presented would fit a public or private outdoor recreation or park facility to the extent it did not. Such a use could be classified by the Zoning Board of Appeals under Section 4.4. An application under Section 4.4 to the ZBA was also denied by the Zoning Administrator. (See Exhibits 11, 13, 20 and 26).

The Zoning Board of Appeals recognizes all of the above General Findings of Fact as being applicable to all applications for a ruling from the ZBA provided by applicants and property owner.

SPECIFIC FINDINGS OF FACT

1. The Board finds that Section 4.7.2 entitled *Special Land Uses in the Forested District* (FR) allows as a special use Public or Private Outdoor Recreation or Park Facilities. (See Exhibit 28.)
2. The Board further finds that Section 2.2 of the definitions section of the Kasson Township Zoning Ordinance defines an outdoor recreation establishment as, a

“ . . . **facility** designed and equipped for the conduct of sports, amusement or leisure time activities and other customary recreational activities outdoors (outside of an enclosed building) and operating as a business and open for use by the public for a fee such as tennis courts, archery ranges, golf courses, miniature gold courses, golf driving ranges and children’s amusement parks.” (See Exhibit 28).
4. The Board finds that the definition of *Outdoor Recreation Establishments* while including examples such as tennis courts archery ranges, golf courses, miniature golf courses, etc. as constituting examples of sports, amusement or leisure time activities and other customary recreational activities outdoors, the list on that definition is not an exclusive sampling of uses on property which could otherwise be utilized for an outdoor recreation establishment and facility as contemplated under Section 4.7.2 as a special use in the Forested District. (See Exhibits 20, 26 and 28 and attached case of *Tullio v Attica Township Michigan Court of*

Appeals decided July 28, 2022).

5. The Board finds that under Section 7.6 C, the Planning Commission failed, after the public hearing was held, to review the request and establish whether or not the standards and requirements of Chapter 7 had been satisfied. (See Exhibits 1, 14 and 28).
6. The Board finds that in dismissing the application without further deliberation and findings, the Planning Commission failed to follow the requirements of Section 7.6 D 1-3 without findings or analysis made by the Planning Commission with respect to all the materials presented including those opposed to the special use permit which could have and should have been completed at the Planning Commission level. (See Exhibits 1 and 14).
7. The Board finds that regardless of concerns related to the activity including any noise, that the Planning Commission did not make any ruling under Section 7.8 *Conditions and Safeguards* which it could have done had it been able to make a decision with respect to the special use permit if the Planning Commission had decided to approve the special use permit. (See Exhibits 1 and 14).
8. The Board finds that the Planning Commission failed to perform its duties under Section 7.10 entitled *Grant or Denial of the Special Use Permit* by failing to complete after public hearing, deliberations and failing to make a decision based upon findings of fact on the whole record by summarily dismissing the application without following the Kasson Township Zoning Ordinance. (See Exhibits 1 and 14).
9. The board finds that the Planning Commission can address concerns related to noise if the special use permit is approved under Section 4.7.2 through conditions imposed as allowed under Chapter 7 as well as inspection under Section 7.13 to ensure that an applicant who receives a special use permit complies with the terms and conditions of the permit. (See Exhibit 28).

DECISION

Motion made by _____ and supported by _____. To reverse the Zoning Administrator's decision and allow for the processing of a special use permit by the applicants and property owner under special land uses in the Forested District (FR) specifically Section 4.7.2 as a Public or Private Outdoor or Park Facility whether done as an amendment to the already applied for special use permit that was dismissed or as a new request for a special use permit to be wholly and properly processed under Chapter 7 of the Kasson Township Zoning Ordinance.

DATE DECISION AND ORDER ADOPTED

_____, 2023

Chairperson

Secretary