

**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 TO APPEAL ZONING ADMINISTRATOR'S DECISION TO FORBID
THE PROCESSING OF AN APPLICATION UNDER SECTION 5.13

The application would have been processed under Section 5.13 of the Zoning Ordinance which under paragraph 1 the second sentence of that section states "Any other temporary outdoor uses require a review by the Planning Commission and may require an approved site plan at the commission's discretion in accordance with Chapter 8."

The Applicants and property owner are seeking to appeal the decision of the Zoning Administrator Tim Cypher who determined on July 7, 2023 and on October 10, 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 permit for the applicants and owner's property which is located in the FR zoning district under Section 5.13 of the Kasson Township Zoning Ordinance. The application sought a permit for an Enduro motorcycle race during limited time periods in the warmer weather seasons as applicants and property owner claim that such races constitute a private outdoor recreation or park facility in conjunction with the definition of *Outdoor Recreation Establishment* provided in Chapter 2, Section 2.2 Definitions. In Section 5.13 *Temporary Outdoor Uses*, the second sentence of the first paragraph states that, "any other temporary outdoor uses require a review of the Planning Commission and may require an approved site plan at the commission's discretion in accordance with Chapter 8" (Chapter 8 addresses Site Plan Review). As such, the applicant requests that the ZBA rule as follows:

That the Zoning Administrator allow for the processing of a request for a

temporary outdoor use under Section 5.13 based upon the second sentence of paragraph one of that section which, in turn, would allow the applicants and property owner to provide information which may or may not require an approved site plan at the Planning Commission's discretion in accordance with Chapter 8 for the temporary outdoor use of an Enduro motocross race(s) being temporary and seasonal in nature.

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 5, 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 5.13 entitled *Temporary Outdoor Uses* allows the Planning Commission to consider **temporary** outdoor uses of any type with the option of the Planning Commission requiring a site plan as part of the approval under Chapter 8 *Development Site Plan Review*. (See Exhibit 28).
2. The Board finds that a temporary outdoor use is not the same as a permanent year round use and that the Planning Commission has the authority and discretion to determine the nature of the temporary use and place appropriate restrictions on the length of any such temporary use under Section 5.13. (See Exhibit 28).

3. The Board finds that the Merriam Webster Online Dictionary defines *temporary* as “lasting for a limited time” (See Exhibit 26).
4. The Board finds that unlike in the *Whitman v Galien Township* case, Section 5.13 provides for a specific use being a temporary use as being an eligible land use activity. (See Exhibit 28).
5. The board further finds that Section 5.13 is therefore compliant with MCL125.3502 because under Section 5.13, temporary uses are not considered special uses but rather are uses either by right if the temporary use is identical to a use by right in a zoning district or subject to a temporary use approval through site plan review by the Planning Commission. (See Exhibits 26 and 28).
6. The Board finds that Section 5.13 includes in its provisions the option on the part of the Planning Commission to require a site plan. Thus the zoning ordinance is in compliance with MCL 125.3501 as the first subsection of that statute authorizes the Planning Commission to do the following a “. . . local unit of government may require the submission and approval of a site plan before authorization of a land use or activity regulated by a zoning ordinance. The zoning ordinance shall specify the body or official responsible for reviewing site plans and granting approval.” (See Exhibit 28).

Motion made by _____ and seconded by _____ to reverse the Zoning Administrator’s decision not to allow for the processing of a temporary use under Section 5.13 by the Planning Commission. Further, this Board requires the Zoning Administrator to allow for the processing of an application for an Enduro Race by the applicants and landowner pursuant to Section 5.13 of the Kasson Township Zoning Ordinance.

DATE DECISION AND ORDER ADOPTED

_____, 2023

Chairperson

Secretary