



ANDERSON TOWNSHIP PLANNING AND ZONING - STAFF REPORT

CASE NUMBER 19-2024 BZA

6859 FIVE MILE ROAD

FOR CONSIDERATION BY THE BOARD OF ZONING APPEALS ON SEPTEMBER 5, 2024.

APPLICANT: Brian Gerbus, on behalf of Molly E. Gerbus TR, property owner

LOCATION & ZONING: 6859 Five Mile Rd.
(Book 500, Page 330, Parcel 130) – “AA” Residence

REQUEST: A variance request to allow habitation in a recreational vehicle where habitation in a recreational vehicle is not permitted per Article 5.3, I, 1, b of the Anderson Township Zoning Resolution, located at 6859 Five Mile Road (Book 500, Page 330, Parcel 130) submitted by Brian and Molly E. Gerbus, on behalf of Molly E Gerbus TR, property owner, zoned “AA” Residence.

SITE DESCRIPTION:
Tract Size: 2.119 acres
Frontage: Approximately 257’ on Five Mile Road
Topography: Decrease in grade from east to west; mostly flat in center and southeast of property
Existing Use: Residential

SURROUNDING CONDITIONS:	<u>ZONE</u>	<u>LAND USE</u>
North:	“AA” Residence	Single Family Residences
South:	“AA” Residence	Park - Withrow Nature Preserve
East:	“AA” Residence	Single Family Residences
West:	“AA” Residence	Single Family Residences

PROPOSED DEVELOPMENT: The applicant is proposing to use a recreational vehicle as temporary living quarters while the primary residence is undergoing construction for an addition and interior renovations. The recreational vehicle is proposed to be located in the rear yard, behind the back plane of the house. The applicant has stated that by living out of the recreational vehicle, the construction time for the property would finish approximately two months earlier than if they lived in the home during construction.

Article 5.3, I, 1, b of the Anderson Township Zoning Resolution states that no recreational vehicles or mobile homes shall be used for the purposes of permanent habitation, living or housekeeping purposes.

HISTORY: The house was built in 1990 and the current owner purchased the property in April of 2023. The property has 4 zoning certificates on file, two for additions on the house in July and August of 2013, one for a pool in September of 2023, and one for two accessory structures and a fence on the property.

As mentioned in the application, there was a zoning violation on the property in regard to the placement of the accessory structures, however, the applicant worked to get that complaint resolved and the property has been in compliance since May of 2024.

FINDINGS:

To authorize by the grant of a special zoning certificate after public hearing, the Board of Zoning Appeals shall make a finding that the proposed variance is appropriate in the location proposed. The finding shall be based upon the general considerations set forth in Article 2.12, D, 2, b.

Staff is of the opinion that the variance could be substantial. The Zoning Resolution prohibits using a recreational vehicle for habitation purposes in Anderson Township. Public Health additionally may require a plan for water availability and disposal of waste for the recreational vehicle if it becomes inhabited.

The essential character of the neighborhood may not be altered, and adjoining properties may not suffer a substantial detriment as a result of the variance. The proposed location of the recreational vehicle would be located behind the back plane of the residence and there is significant existing screening on the property that should shield the vehicle from view. The setbacks to property lines are greater than 40 feet to the east and south lot lines.

The variance would not adversely affect the delivery of governmental services.

The property owner's predicament may be feasibly obviated through some other method other than a variance. The applicant stated that it is viable to live in the home while the construction at the property is taking place.

Staff is of the opinion that the spirit and intent behind the zoning requirement may not be observed by granting the variance. The Zoning Resolution is clear about regulations related to recreational vehicles and that the only permitted use for a recreational vehicle is storage in the rear yard on residential properties.

STANDARDS TO BE CONSIDERED:

The aforementioned variance requested should be evaluated on the following criteria:

- (1) The property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.
- (2) The variance is substantial.
- (3) The essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.
- (4) The variance would not adversely affect the delivery of governmental services (i.e. water, sewer, garbage).
- (5) The property owner purchased the property with knowledge of the zoning restrictions.
- (6) The property owner's predicament can be feasibly obviated through some method other than a variance.
- (7) The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Disclaimer: This staff recommendation is based on the facts known to the author at the time the recommendation was made. Staff attempted to use those known facts to analyze the relationship of those facts to the standards set forth in the Zoning Resolution for the particular issue and property before the BZA, and in keeping with past decisions of the BZA. The BZA members have an obligation to consider all of the evidence that is entered into this case during the BZA hearing through the sworn testimony of the witnesses, as well as the documents submitted as part of the witnesses' testimony. The staff recommendation should be considered as part of the evidence before you. The Zoning Resolution empowers the BZA to make reasonable interpretations of the Zoning Resolution, to judge the credibility and reliability of the witnesses, and to decide each case based on the evidence presented during the BZA hearing process.