

# RKPT

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**Michael J. Friedmann**

*mfriedmann@rkpt.com*

April 21, 2025

**VIA HAND DELIVERY**

Anderson Township Board of Zoning Appeals  
7850 Five Mile Road  
Anderson Township, Ohio 45230

Anderson Township Department of Planning and Zoning  
c/o Paul Drury, Director  
7850 Five Mile Road  
Anderson Township, Ohio 45230

RE: Appeal to Anderson Township Board of Zoning Appeals  
RE: Notice of Zoning Violation re: 6694 Clough Pike  
(Parcel ID 500-0360-0094), Anderson Township, OH 45244  
Our Client: Anderson Land Holdings, LLC  
RKPT File No.: CL2675 L001

This correspondence constitutes an appeal from the Notice of Violation re: 6694 Clough Pike (Parcel ID 500-0360-0094) Anderson Township, OH 45244 dated April 1, 2025, and sent on behalf of the Anderson Township Department of Planning and Zoning. Our firm represents Anderson Land Holdings, LLC ("Anderson Land") in connection with this appeal. Anderson Land Holdings, LLC is the owner of the property located at 6694 Clough Pike, Anderson Township, Ohio 45244 ("Property").

The basis for this appeal is that Anderson Land is not required to obtain a zoning certificate specifically for the use of a temporary canopy, as the canopy is not a "structure" as defined in the Anderson Township Zoning Resolution ("ATZR") Article 2.1.

Anderson Land operates the Anderson Township Pub ("ATP") on the Property. According to the notice of violation, a copy of which is attached to this Notice of Appeal, the notice of violation was issued based on a "temporary tent" being located on the Property without a zoning certificate. The notice indicates that, pursuant to Article 2.1(A) of the Anderson Township Zoning Resolution:

Except as provided otherwise in this Resolution, no land shall be occupied or used and no building, **structure** or sign shall be located, constructed, reconstructed, enlarged or structurally altered, nor work commenced upon the same, nor occupied or used in whole or in part for any purpose whatsoever until a zoning certificate is issued by the Anderson Township Zoning Inspector stating that the building, structure, sign and use comply with the provisions of this Resolution.

ATZR Article 2.1(A)(emphasis added in Notice). According to the notice, such temporary tent is a “structure,” and therefore requires a zoning certificate. A “structure” is defined in the Zoning Resolution as:

Anything constructed or erected, the use of which requires location on the ground or attached to something having a location on the ground including, but without limiting the generality of the foregoing, signs, areas improved for parking, backstops for tennis courts, fences, swimming pools and pergolas.

ATZR Article 6.1.

First of all, the “temporary tent” that is described in the letter is actually a canopy that is open on all sides, is under 700 square feet and is appropriately spaced from other structures on the Property.

Secondly, the term “tent” and/or “canopy” is not defined anywhere in the Township Zoning Resolution. And the vague and ambiguous definition of “structure” does not clearly include a canopy. As zoning ordinances are in derogation of the common law and deprive property owners of the use of their land, any ambiguity in the zoning resolution must be construed in favor of the property owner. *Cleveland Clinic Found. v. Bd. of Zoning Appeals*, 2014-Ohio-4809, ¶ 34; And the zoning resolution cannot be extended by implication. *Henley v. City of Youngstown Bd. of Zoning Appeals*, 90 Ohio St. 3d 142, 152 (2000).

Since the Anderson Township Zoning Resolution does not clearly restrict the use of canopies on private property, Anderson Land is free to maintain the canopy without a zoning certificate.

On a more practical note, Anderson Land, through its operation of ATP, uses the canopy to provide shade for individuals on the Property on sunny days, and a place to stay dry on rainy days. Anderson Land has had extensive discussions with Anderson Township regarding the canopy, and based on indications from Anderson Township it was understood by Anderson Land that further certification was not required if Anderson Land replaced its more permanent temporary tent with the canopy that is currently in use.

For the foregoing reasons and authority, Anderson Land Holdings, LLC requests that the Board of Zoning Appeals rescind the notice of violation issued on April 1, 2025, find that canopies do not require a zoning certificate pursuant to the Anderson Township Zoning Resolution, and permit Anderson Land to continue using its canopy without a zoning certificate.

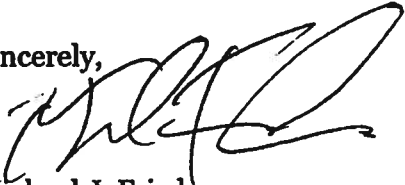
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**Anderson Land Holdings, LLC requests a hearing on this matter pursuant to Article 2.12 (C), and specifically reserves the right to supplement this notice with any additional information, documents, or arguments prior to that appeal hearing.**

**Sincerely,**

A handwritten signature in black ink, appearing to read 'M. Friedmann', written over the word 'Sincerely,'.

**Michael J. Friedmann**



# Notice of Violation 4/1/2025



## Anderson Township

7850 Five Mile Road  
Anderson Township, Ohio 45220-1116  
714.488.8400  
AndersonTownshipOH1@gmail.com  
AndersonOH.com/Anderson

Township Trustees  
Andrea S. Smith  
J. Keith Landon  
H. Eric Soper

Physical Officer  
Brian S. Johnson

Township Administrator  
Toby L. Fisher

Assistant Township  
Administration for  
Human Resources  
Deborah M. Parker

Assistant Township  
Administration for  
Operations  
Scott T. Gorman, AICP

Law Director  
Margaret W. Casey  
313.445.5111

Finance Director  
Teresa Meyer

Fire Chief  
C. Richard Martin, Jr.

Planning & Zoning Director  
Paul J. Harvey, Jr., AICP

Public Works Director  
Eric J. Longmire

Police & Commander  
Lt. Dave Downing  
Headquarters Office  
313.445.5770

April 1, 2025

Anderson Land Holdings LLC  
7527 State Road Ste C  
Cincinnati, OH 45244

RE: Notice of Zoning Violation re: 6604 Clough Pike (Parcel ID 500-0360-0094),  
Anderson Township, OH 45244

To Whom It May Concern:

During a recent inspection in the area on April 1, 2025, staff noticed a temporary tent on your property located at 6604 Clough Pike (Parcel ID 500-0360-0094), Anderson Township, OH 45244. The Township has no record of a zoning certificate on file for this structure.

Please note that Article 2.1.A of the Anderson Township Zoning Resolution (ATZR) states the following:

*Article 2.1. A – Except as provided otherwise in this Resolution, no land shall be occupied or used and no building, structure or sign shall be located, constructed, reconstructed, enlarged or structurally altered, nor work commenced upon the same, nor occupied or used in whole or in part for any purpose whatsoever until a zoning certificate is issued by the Anderson Township Zoning Inspector stating that the building, structure, sign and use comply with the provisions of this Resolution. (emphasis added)*

Further, "structure," as applied in ATZR 2.1.A, is defined by ATZR 6.3 to be "Anything constructed or erected, the use of which requires location on the ground or attached to something having a location on the ground including, but without limiting the generality of the foregoing, signs, areas improved for parking, backstops for tennis courts, fences, swimming pools and pergolas."

You are hereby ordered to immediately cease use of this structure on the property and apply for a zoning certificate at our office at 7850 Five Mile Road, within 20 days of receipt of this notice. Please note that this property is a Planned Unit Development (PUD) (Case 1-2023 PUD) and requires a Major Adjustment to the PUD per Article 4.1. Failure to comply with this lawful order constitutes a minor misdemeanor, punishable by a \$500 fine per offense, each day such violation continues being its own separate offense. See ORC §19.99 and ATZR 2.10.B.

Should you desire to appeal this Notice of Violation, per ATZR 2.12.C, such appeal must be taken within twenty (20) days of the date of this letter by filing with both the Anderson Township Department of Planning and Zoning and with the Anderson Township Board of Zoning Appeals a notice of appeal specifying the grounds thereof.

## **Documents included with Notice of Appeal**

Notice of Violation re: 6694 Clough Pike (Parcel ID 500-0360-0094)  
Anderson Township, OH 45244

**\*Filing fee enclosed with original Notice of Appeal**

**Pursuant to the instructions for filing a zoning appeal, the following documents have been attached for the BZA's review:**

### **1. Statement of Facts and Reasons for Appeal:**

- Please see Notice of Appeal Letter dated 4/21/2025 attached.

### **2. Specific References to Anderson Township Zoning Resolution:**

- ATZR Article 2.1 – attached
- ATZR Article 6.1 – attached

### **3. Plats and Plans**

- Not applicable.

### **4. Description of the use:**

- See Notice of Appeal letter dated 4/21/2025 attached.

### **5. Consent of Owner:**

- See Attached Signed Consent Form.

## ARTICLE 2

# Administration

### 2.1 Zoning Certificates

- A.** Except as provided otherwise in this Resolution, no land shall be occupied or used and no building, structure or sign shall be located, constructed, reconstructed, enlarged or structurally altered, nor work commenced upon the same, nor occupied or used in whole or in part for any purpose whatsoever until a zoning certificate is issued by the Anderson Township Zoning Inspector stating that the building, structure, sign and use comply with the provisions of this Resolution. No change of use shall be made in any building, structure, sign, or part thereof, now or hereafter located, constructed, reconstructed, enlarged or structurally altered, except for single-family dwelling purposes, without a zoning certificate being issued therefore by the Anderson Township Zoning Inspector. No zoning certificate shall be issued to make a change unless the changes are in conformity with the provisions of this Resolution.
- B.** Nothing in this Section shall prevent the continuance of a non-conforming use as herein before authorized unless a discontinuance is necessary for the safety of life or property.
- C.** A zoning certificate shall be applied for prior to or coincidentally with the application for a construction permit. A record of all zoning certificates shall be kept on file in the office of the Anderson Township Building Inspector, and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building affected.
- D.** A zoning certificate shall be required of all Non-Conforming Uses. Application for the zoning certificate for Non-Conforming Uses shall be filed within twelve (12) months from the effective date of this Resolution.
- E.** A non-refundable fee, to be determined by the Trustees of Anderson Township, shall be paid at the time an application for a zoning certificate, a certificate of occupancy, or any other requested permit or authorization is submitted.
- F.** The Director of Planning and Zoning may revoke a zoning certificate where there has been a violation of the provisions of this resolution or a misrepresentation of fact on the permit application. The Director of Planning and Zoning shall issue a written statement contemporaneous with his decision, explaining the reasons for revocation. Appeals from such decisions may be made to the Anderson Township Board of Zoning Appeals, pursuant to **Article 2.12.C**.



- a. **Street right-of-way:** Includes pavement, and sidewalks and all of the land between opposite property lines.
- b. The dividing line between a lot, tract or parcel of land and the contiguous right-of-way.

**Structure:** Anything constructed or erected, the use of which requires location on the ground or attached to something having a location on the ground including, but without limiting the generality of the foregoing, signs, areas improved for parking, backstops for tennis courts, fences, swimming pools and pergolas.

**Structural Alterations:** Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any increase in the area of cubical contents of the building.

## T

**Telecommunications Tower:** Any free-standing structure, or any structure to be attached to a building or other structure, that meets all of the criteria contained in Ohio Revised Code Section 519.211 (B). Telecommunications tower may be constructed as: a "monopole", meaning one cylindrical column in the air; a "lattice tower", meaning three or more vertical legs trussed together; or a "guyed tower", meaning a structure that is secured to the ground by wires, cables or similar material.

**Temporary Sign:** A sign for use for six (6) months or less, not for permanent use, including transportable signs which are not incidental to identifying a delivery or service vehicle. The material of which the sign may be made (cloth, canvas, light metal, plastic, cardboard) or the manner in which the sign is affixed to the ground or structure are of a nature not suitable for permanent display because exposure to the elements may unreasonably deface the message, discolor or tear the material or loosen the method by which a sign is anchored.

**Tenant Space:** A securable area separated from other areas by walls and doors that is available for lease or rent within a multi-tenant building, such as tenant spaces typically found within an office building, shopping mall, or strip center.

**Trade Stimulators:** A device, other than a sign, which seeks to attract attention through the use of a balloon or other display. This may or may not be related to the primary use of the property.

**Transportable Sign:** A temporary sign that is movable when mounted on a chassis, truck bed, or trailer, which may be illuminated, that may display a changeable message face on one or more sides.

**Trailer:** The word "trailer" shall include trailer coach, automobile trailer, camp car or any towed or self-propelled vehicle constructed, reconstructed, or added to by means of accessories in such a manner as will permit the use and occupancy thereof for:

- a. Temporary human habitation for travel, recreation, vacation, or other primarily transient purposes, as opposed to a mobile home as defined in in this Article or manufactured home as defined in this Article of this Resolution; or
- b. Office use, or storage or conveyance of machinery, tools, or equipment, including those vehicles that are attached to an automobile or truck for the sole purpose of transporting goods or farm animals.

**Trustees:** Board of Anderson Township Trustees.

## V

**Variable Message Signs:** A permanent sign or graphic object which is displayed in a series of electric lights, movable parts, or other image producing devices, and whose message or graphic changes in form, color, intensity or any other manner more than once in a 24 hour period.

**Variance:** A means by which relief the Board of Zoning Appeals may, because of special conditions, authorize an exception to a strict rule or literal enforcement of the Anderson Township Zoning Resolution, and grant relief from particular