



ANDERSON TOWNSHIP PLANNING AND ZONING - STAFF REPORT

CASE NUMBER 14-2025 BZA

6694 AND 6700 CLOUGH PIKE

FOR CONSIDERATION BY THE BOARD OF ZONING APPEALS ON JUNE 5, 2025

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| APPLICANT: | Michael J. Friedmann, RKPT, on behalf of Anderson Land Holding's LLC, property owner | | |
| LOCATION & ZONING: | 6694 and 6700 Clough Pike (Book 500, Page 360, Parcels 94 and 33) – "E-PUD" Retail Planned Unit Development | | |
| REQUEST: | An appeal of a zoning violation letter dated 4/1/2025, regarding a temporary tent erected where it was prohibited as conditioned by the Zoning Commission in Case 1-2023 PUD. | | |
| SITE DESCRIPTION: | <i>Tract Size:</i> | .436 acres (6694 Clough) and .650 acres (6700 Clough) | |
| | <i>Frontage:</i> | 49.9' (6694 Clough) and 82.61' (6700 Clough) on Clough Pike | |
| | <i>Topography:</i> | Mostly flat, sharp increase in grade toward the rear of the site (east) | |
| | <i>Existing Use:</i> | Anderson Township Pub/Vacant commercial structure | |
| SURROUNDING CONDITIONS: | | <u>ZONE</u> | <u>LAND USE</u> |
| | North: | "E" Retail | Family Pet Center |
| | South: | "E" Retail | The Quencher |
| | East: | "A-2" Residence | Vacant lot/ Single family home |
| | West: | "B-CUP Residence- Community Unit Plan | Greenspace Township Greenspace |
| PROPOSED APPEAL: | The applicant is appealing a letter of violation dated 4/1/2025, in regards to the use of a temporary structure (a tent) being erected on the property without a zoning certificate, and where such structure was prohibited in prior resolutions of the Zoning Commission as discussed in History. | | |
| HISTORY: | <p>The ATP building was constructed in 1957 and the building located at 6700 Clough Pike was constructed in 1968. Both parking lots were nonconforming to the current parking regulations. The ATP was established in 1982. The current owners purchased ATP on March 10, 2020 and 6700 Clough on June 15, 2020. The former use of 6700 Clough was SDH Controls.</p> <p>Below is the history of communication with owners following a complaint received:</p> <ul style="list-style-type: none">- August 2020 – Received email from Hamilton County Planning + Development / Stormwater that a complaint was filed for paving / expanding the rear parking area- August 2020 – Township contacted owner requesting an application for a zoning certificate to be made for work completed on the property- September 2020 – ATP submitted a plan for review, however additional information was needed in order to determine what zoning process was necessary- June 2022 – staff met onsite with owner to discuss future plans and request an application for a zoning certificate to bring property into compliance- March 2023 – Fire & Rescue responded to small fire and noticed an unpermitted tent behind building- March 2023 – Hamilton County Planning + Development posted the tent as an "Unsafe Structure" | | |

- March 2023 – Planning and Zoning denied zoning certificate for tent with outstanding zoning violations on property
- April 5, 2023 – Zoning certificate was issued for two temporary tents to be removed by May 23, 2023, pending the outcome of the Zoning Commission hearing
- April 5, 2023 – Building permit issued for two tents, occupancy approved April 18, 2023
- May 1, 2023 – PUD application submitted, however continued due to incomplete application
- May 23, 2023 – Date listed on 4/5/2023 Zoning Certificate for the two temporary tents to be removed. The tents were never removed.
- June 9, 2023 – Revised PUD application submitted
- June 26, 2023 – Case 1-2023 PUD was continued due to an incomplete application
- July 5, 2023 – Zoning certificate was issued for two temporary tents for 180 days

On October 23, 2023, the Zoning Commission held a public hearing for Case 1-2023 PUD and approved the Planned Unit Development for the properties of 6694 and 6700 Clough Pike in Resolution 2023-1023-01 with 6 conditions.

On April 22, 2024, a discussion item was brought to the Zoning Commission, by request of the applicant, to interpret whether or not condition #6, which stated: “That the tents should be removed when the permit expires on April 17, 2024” meant that they could not be put back up. The Zoning Commission agreed that the intent was that the tents were to be removed permanently.

On May 20, 2024, the Zoning Commission heard a request to (A) keep a temporary tent in the parking lot with no stated timeframe for removal and (B) an extension of 6 months to 1 year to complete the work associated with the approval for Case 1-2023 PUD. In Resolution 2024-0520-01, The Zoning Commission denied Request A for the following reasons:

1. The Hamilton County Building Department instructions state that tents must be removed after a period of 180 days.
2. The current tents on the property of 6694 Clough Pike have been installed since 2020 and the last permit expired in April of 2024.
3. Resolution #2023-1023-01 states “That the tents should be removed when the permit expires on April 17, 2024.
4. Resolution #2023-1023-01 states “That the label on the site plan for the tents “to remain” be removed from the site plan” and that the applicant has not met all conditions from the October 23, 2023 PUD approval in order to receive a zoning certificate.

The denial from the May 20, 2024 Zoning Commission hearing (Resolution 2024-0520-01) included the following condition:

1. That the tents shall be removed from the property by June 1, 2024 and not reinstalled.

Resolution 2024-0520-01 approved request B.

An appeal was filed to the Board of Township Trustees on June 14, 2024 but was never moved forward by the property owner.

On February 21, 2025, staff emailed Nick Fucito, one of the owners of ATP, and stated that the appeal filed on June 14, 2024 was still outstanding. As well as that it was brought to staff's attention that the tents have been taken down for the most part with a frame remaining, and asking for an update in order to bring the property into compliance.

On February 21, 2025, Nick Fucito, part owner of ATP, replied stating that he believed their attorney and a Township attorney were in touch and working on the appeal. He stated that both tents are down, but that they are planning to put another tent up that meets the under 700 square foot regulations (20' x 30') and that they are not moving forward with the new concept next door at this time.

On February 25, 2025, staff replied to Mr. Fucito's email stating that we can issue a zoning certificate for Case 1-2023 PUD if they are OK with staff crossing out the tents that are on the site plan. The email also stated that as for the other planned tent, while it may not require a building permit, it is staff and legal counsel's interpretation from the Case 1-2023 PUD Resolution, that no tents are permitted on the site. Therefore, staff cannot issue a zoning certificate for any tents.

On April 1, 2025, Anderson Township staff sent a Notice of Zoning Violation in regards to 6694 Clough Pike, stating that staff noticed a temporary tent on the property which has no record of a zoning certificate on file for the structure. In addition, it stated that the property owner is ordered to immediately cease use of the structure on the property and apply for a zoning certificate at the Township office. It also stated that this property is a Planned Unit Development (Case 1-2023 PUD) and requires a Major Adjustment to the PUD per Article 4.1, I, to modify the conditions of the Resolution.

FINDINGS:

According to the Anderson Township Zoning Resolution, a temporary tent is considered a 'structure' per the definition (below) found in Article 6, Definitions. Structures are required to receive a zoning certificate (Article 2.1).

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.

In Article 4.1, I, 2, of the Anderson Township Zoning Resolution defines what is considered a Major Adjustment.

Major Adjustment: Any adjustment to the PUD Plan within the criteria of Article 4.1 but not authorized by Article 4.1, I shall be considered a major adjustment. The Anderson Township Zoning Commission, following notice by the Department of Planning and Zoning to all property owners whose properties are located within two hundred (200 feet) of the PUD, shall hold a

public hearing within ten (10) to forty-five (45) days of receipt of the completed Zoning Compliance Plan application. At the conclusion of the public hearing, the Commission may approve an application for a major adjustment to the PUD Plan not requiring a modification of or recorded easements or of written conditions of approval contained in an Anderson Township Zoning Commission's Resolution. Findings shall be made that any changes in the plan as approved will be in substantial conformity with the intent of such PUD plan. If the Commission determines that a major adjustment is not in substantial conformity with the intent of such PUD Plan as approved, the Commission shall review the request in accordance with the procedures set forth in Article 4.1, E.

The applicant has submitted two Major Adjustments to Case 1-2023 PUD and in both cases, the tents were discussed and conditioned to be removed by a specific date. The continued use and maintenance of a tent or tents on the property without proper permits were considered a violation of the Anderson Township Zoning Resolution, and of Hamilton County Building Department and the Anderson Township Fire and Rescue Department regulations. The tents were not removed and the property remained in violation until the applicant removed them around February of 2025, although after their removal, another tent was erected without a zoning certificate.

Based on the Zoning Commission decision in Resolution 24-0520-01, staff is of the opinion that no tent has been permitted on this property as part of the approved PUD, and that the tent currently located on the property is a "structure" as defined in the Anderson Township Zoning Resolution, because it was erected on the ground or attached to something having a location on the ground and its use "requires location on the ground or attached to something having a location on the ground." This Resolution does not prevent the applicant from applying for permits for any other additions or modifications to their property, but the current use of a tent or tents on the property constitutes a zoning violation.

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.