

**CITY OF ESCANABA
PLANNING COMMISSION
Official Proceedings – Thursday, October 12, 2023**

MEETING CALLED TO ORDER

A meeting of the Escanaba Planning Commission was held on Thursday, October 12, 2023 at 6:00pm in Room C101 at City Hall, 410 Ludington Street, Escanaba, MI 49829.

Chair Hellermann called the meeting to order at 6:00 PM.

ROLL CALL

Chair James Hellermann:	Present	Commr. Kasja Nelson:	Present
Secretary Roy Webber:	Present	Commr. Christiana Reynolds:	Present
Commr. Patrick Connor:	Present	Commr. Mark Sadowski:	Present
Commr. Michael Harris:	Present		

With seven in attendance, a quorum of the Planning Commission was present.

ALSO PRESENT

City Administration:

Tyler Anthony, Planning & Zoning Admin.	Ronald Beauchamp, City Council Liaison
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Others:

Susan Corwin	Gary DuBord, Soo Hill Sanitation Inc.
Noah Weaver, Weaver Contracting	

Six other unnamed individuals were present.

MINUTES

A motion was made by Webber to approve the September 14, 2023 minutes as presented. Supported by Connor. MOTION PASSED.

AGENDA

Hellerman asked whether staff had any adjustments to the agenda. Anthony reported that he had an agenda item which he wished to have added to the agenda. That item was an interpretation of an ice cream shop, which was a use not mentioned in the Zoning Code (see exhibit H).

A motion was made by Sadowski to approve the meeting agenda with the following amendment and changes: (1) add “Interpretation – Ice Cream Shop” to the agenda as NB3, and (2) renumber the previous items NB3 and NB4 to NB4 and NB5. Supported by Webber. MOTION PASSED.

CONFLICT OF INTEREST DECLARATIONS

None.

PUBLIC COMMENT ON AGENDA ITEMS

Hellermann paused to explain that comments related to public hearings on the agenda were to be reserved until that item came up. Only comments on any other agenda items were to be heard during this public comment time.

Gary Dubord, President of Soo Hill Sanitation, began to speak. Knowing that DuBord had business on the agenda, Hellermann recommended that he reserve his comments until that agenda item. He told DuBord that he would be questioned directly at that time.

Susan Corwin asked to clarify whether this was the time to comment on the proposed zoning text amendment. Hellermann explained that it was not, and that she will have the time to speak on that momentarily.

PUBLIC HEARINGS

PH1: Zoning Text Amendment – Chickens and Ducks

The Commission held a public hearing on a proposed amendment to the Zoning Code, which would allow for the keeping of chickens and ducks in the City by license. Anthony introduced the agenda item, describing the history to that point and the methods used in the draft ordinance.

Chair Hellermann opened the public hearing at 6:07 PM.

Susan Corwin, resident of Escanaba, spoke in favor of the amendment. She explained that the chance to involve children in keeping small livestock like chickens was beneficial to learning; the duties of care over such animals had proven their value through 4H programs. Corwin stressed that animals should be kept in enclosed coops and runs, both for their own safety and for that of the community. She noted that limiting allowed chicken numbers to four or six was a good idea. She questioned why a zoning permit was required in the draft, since she believed such regulation only applied to accessory buildings like sheds or garages. Corwin supported the prohibition of roosters, but she was disappointed that egg and meat sales were to be banned as well; given the chance, surpluses of such foods could have been donated to local food pantries.

Anthony read aloud written correspondence which was received for the public hearing (see exhibits A through G). With Hellermann's approval, he did not read aloud a duplicate letter received of Betty Giovenco by US mail (exhibit F). There was no difference between that letter and a previous one received of Betty Giovenco by email (exhibit D).

With no further comments, Chair Hellermann closed the public hearing at 6:19 PM.

Hellermann answered Corwin's question regarding a zoning permit, noting that the Zoning Code regulated all buildings and structures regardless of their use. He also explained that the egg and meat sales ban had its roots in federal food regulation. Anthony added that state regulation of cottage foods was another factor. He then noted that the ban expressly excluded personal or custom slaughters in accordance with State laws.

Harris was surprised by the low public attendance at the meeting; Hellermann added that he was disappointed, too. Harris explained that, in his professional experience as a real estate agent, most people who move into urban areas do so to avoid living near farms. He then added his own objections to domestic fowl, stressing their unsanitary nature. Harris then recalled comments made in the hearing over the benefits to having chickens and ducks in the City, noting that he hadn't thought of such things before. Regardless, he would still oppose anyone who tried to have them next door to his property.

Reynolds spoke on concerns which had been in the public discourse up to this point. She listed each primary concern, noting how each one was addressed in the draft ordinance. She then pointed out the environmental, economic, and social benefits that could have come from allowing urban food production; other places in Michigan were already realizing the returns from such local food networks. Reynolds then outlined that Escanaba could make this work just as well as other places in the State where it had already succeeded.

Hellermann asked Anthony whether staff had asked any other communities about their work with urban livestock. Anthony stated that they had not. Hellermann then asked which other communities nearby, if any, would have had such allowances. Anthony reported that Marquette did, and so did a few others in northern Wisconsin.

Sadowski shared his experiences with keeping a chicken flock for eight years. He stated his desire for more liberties, such as keeping chickens in the City. He disapproved, however, of permit and license usage to regulate this activity. In his opinion, these regulations amounted only to undue taxation, and that other methods could have been applied instead. Sadowski then reported on the Local Farms and Food Act of 2023 (US Senate S.1205, introduced 4/19/2023). He added his satisfaction with those efforts to deregulate some types of food production activities.

Nelson stated her expectation that most people would oppose allowing chicken keeping within the City, but she noted that the draft ordinance seemed to cover all major issues. She also expressed disappointment with the lack of public attendance at the meeting. Hellermann added that they at least had a good number of written comments to make up for low attendance.

Webber related a story about a goose in his childhood neighborhood in Ohio, noting how much of a mess it created. He then shared that his brother, who lived on the outskirts of Charlottesville, Virginia a few years prior, kept chickens loose in his yard. Over a few short months, all the chickens were predated by foxes because they were not safely enclosed. Webber summarized that, if the chickens do not cause a public nuisance, and that the City can reasonably regulate the activity, then he had no issues with it; he did still feel to be “on the fence”, however.

Connor expressed gratitude for the public input which was received. He then stressed that feedback should have been collected from other communities before the City acted on the item. He suggested that the item be postponed until that was done. Hellermann echoed that sentiment, but he then indicated that no other animals – wild or domestic – had posed any serious issues to that point. Harris interjected, stating that chickens were not like other domestic animals, and that they carried with them real concerns.

Commissioners and staff discussed standards and enforcement concerns. Anthony noted that the draft ordinance was based on resources from the MSU Extension, USDA Extension, and the U.P. Food Exchange. Hellermann and Anthony clarified what exactly was to be covered by the permit, and what was to be covered by the annual license.

A motion was made by Harris to postpone the item until experience from other area communities, which had allowed the keeping of chickens in urban areas, could be gathered. Supported by Webber.

A roll call vote was taken with the following results:

Yes: Hellermann, Webber, Connor, Harris, Nelson, Reynolds, Sadowski.

No: None.

MOTION PASSED.

UNFINISHED BUSINESS

None.

NEW BUSINESS

NB1: Land Sale Request – Whitetail Industrial Park Lot #8

The Commission reviewed a land sale request for recommendation to the City Council. This request was for a lot in the industrial park along the north side of 19th Avenue North. Anthony described relevant portions of the *Policy on Sale, Lease, or Option of City-Owned Land*.

Gary DuBord, President of Soo Hill Sanitation (Soo Hill) and land sale requester, spoke before to the Commission. At Hellermann’s invitation, DuBord described how Soo Hill intended to use the property which they sought to buy. Soo Hill intended to store and maintain equipment there, and they expected to erect a 36-foot-by-60-foot building and fence in a storage yard for those purposes.

A motion was made by Harris to recommend to the City Council the sale of Whitetail Industrial Park Lot # 8 to Soo Hill Sanitation. Supported by Webber.

Anthony asked DuBord to explain exactly what equipment they meant to store and maintain. DuBord listed two garbage trucks, a roll-off dumpster truck, more than one pick-up truck, and at least two unspecified trailers. He noted that no garbage was to be stored at the property, but that they did intend to clean and store unused dumpsters inside the fenced storage yard.

Hellermann asked Anthony for the grounds of his question on equipment. In response, he read Zoning Code sec. 1401.1 (Industrial Park District; Purpose), which described Industrial Park districts as being home to “clean industries”.

A roll call vote was taken with the following results:

Yes: Hellermann, Webber, Connor, Harris, Nelson, Reynolds, Sadowski.

No: None.

MOTION PASSED.

NB2: Land Sale Request – 2700 Block of North 32nd Street

The Commission reviewed a land sale request for recommendation to the City Council. This request was for an unplatted lot in the industrial park at the northernmost edge of the City. Anthony described relevant portions of the *Policy on Sale, Lease, or Option of City-Owned Land*.

Noah Weaver, owner & proprietor of Weaver Contracting and land sale requester, spoke before the Commission. He then described his company's intended use of the property. Weaver

Contracting planned to erect a shop and office on the property, and to store construction equipment & vehicles including some trucks and trailers. Hellermann briefly noted his surprise that the City had not sold more land in that area.

A motion was made by Harris to recommend to the City Council the sale of one acre of land at the 2700 block of North 32nd Street to Weaver Contracting. Supported by Sadowski.

A roll call vote was taken with the following results:

Yes: Hellermann, Webber, Connor, Harris, Nelson, Reynolds, Sadowski.

No: None

MOTION PASSED.

NB3: Interpretation – Ice Cream Shop

The Commission reviewed information regarding a use interpretation requested by staff. The use, being that of an ice cream shop, was not defined in the Zoning Code at that time. Anthony had been asked to interpret whether that use fit best when defined as a convenience store or as a restaurant, or whether it qualified as a separate use that could have been allowed in an “A – Single Family Dwelling” zoning district. The question evolved from separate inquiries from various persons who wished to purchase a former commercial building located at 2730 Lake Shore Drive.

Commissioners discussed the implications of classifying a use not mentioned in the Zoning Code. They were hesitant to decide on the item in a way which carried implications for all “A” districts in the City. Sadowski asked whether this decision was to be restricted solely to the Lake Shore Drive property, or if a deeper trend was at work. Anthony merely sought the Commission’s decision on the item at hand, adding that there was no ulterior motive. Hellermann found parallels between this item and a zoning map amendment request from earlier in the year. That amendment sought to move a nonconforming use into a zoning district in which it was allowed; however, the request was denied on the grounds that it was not supported by the Master Plan, the Future Land Use Map, or good zoning practices.

A motion was made by Harris to classify an ice cream shop as a “restaurant” land use. Supported by Connor.

A roll call vote was taken with the following results:

Yes: Hellermann, Webber, Connor, Harris, Nelson, Reynolds.

No: Sadowski.

MOTION PASSED.

NB4: Project Updates

a. Delta County Planning Commission

Connor reported that he had been stripped of his liaison powers with the Delta County Planning Commission (County Commission). When Connor served on the Escanaba Planning Commission (City Commission) previously, he was also the liaison to the County Commission during that tenure. At that time, he was vested with the rights of an *ex officio* member of the County Commission, including voting. But during this tenure, it appears that he had no such rights, and

was only made aware of this at the meeting. [Note: this was the first County Commission meeting Connor had attended as liaison, as all of their meetings since his appointment to the City Commission in June 2023 had been cancelled.]

Connor then reported that the County Commission reviewed a proposed zoning map amendment. The proposal, which was to provide for two “Town Development” strip-zoning districts of land extending one-quarter mile out from each side of the roadway. The first of these was planned along highway US-2/41 stretching westward from the Escanaba city limits. The second was another of the same strip-zoning district along highway US-2/41/M-35, stretching northward from the Escanaba city limits to a point past the northern city limits of Gladstone. Connor stated that, after discussion on the topic, the County Commission voted on the proposed zoning map amendment with no public hearing and no mailed or published notice. They then intended to publish the notice after the fact. He expressed shock over this, as these actions appeared to violate the Michigan Zoning Enabling Act, specifically secs. 125.3202 and 125.3103. After his report, Connor then resigned from his appointment as liaison to the County Commission.

A motion was made by Hellermann to establish an *ad-hoc* committee. Such a committee was (1) to be constituted by Sec. Webber, Commr. Connor, and Anthony; (2) to investigate whether any unwarranted and unjustified sanctions were placed upon Commr. Connor; (3) to draft an open letter addressed to the Delta County Planning Commission, if any such sanctions were found; and (4) to present that draft letter to the Escanaba Planning Commission for review. Supported by Reynolds.

A roll call vote was taken with the following results:

Yes: Hellermann, Webber, Connor, Harris, Nelson, Reynolds, Sadowski.

No: None.

MOTION PASSED.

With the appointment of liaison to the County Commission now vacant, Hellermann then sought nominees thereto.

A motion was made by Hellermann to appoint Commr. Nelson as liaison to the Delta County Planning Commission. Supported by Webber.

A roll call vote was taken with the following results:

Yes: Hellermann, Webber, Connor, Harris, Nelson, Reynolds, Sadowski.

No: None.

MOTION PASSED.

b. Zoning Board of Appeals (ZBA)

Anthony reported that the ZBA met on October 3, 2023. No appeals or variances were heard, so a training session was held on nonconforming use enforcement. That training fulfilled ½ hour of the ZBA’s 4-hour annual training requirement.

c. Zoning/Land Use Permits

Commissioners reviewed the Permit and PZE (Planning & Zoning Enforcement) Reports. Anthony noted that permit activity spiked in September. He added that the new fee schedule had been generating more revenue than the last one.

d. Form-Based Code Institute (FBCI) Scope of Work

Anthony reported that he had engaged in high-level discussions with the FBCI, and that he & the FBCI were exploring what that engagement was to be. He then asked for Commission guidance on the scope of work’s boundaries. After brief discussion, Commissioners expressed that the scope should be limited to one or more compact areas. The Commission felt that this would constitute a test of the Form-Based Code’s effectiveness before applying it to other areas in the City.

e. Escanaba Township Planning Commission

Anthony reported his attendance of the Escanaba Township Planning Commission (Township Commission) meeting on October 3. At that meeting, the Township Commission heard a zoning map amendment request by Barron Farms. That request was then recommended for denial by the Escanaba Township Board of Commissioners. This denial was based on the Township Commission’s findings that the request had no support from their Master Plan, nor from their Future Land Use Map. Anthony noted that the meeting got very contentious, and that a dispute or two nearly became physical.

NB5: Training Updates

Sadowski reported four hours of self-guided training, which involved research on form-based code impacts. He shared the materials with Anthony previously, and Anthony stated that his four hours were to be recorded.

GENERAL PUBLIC COMMENT

Ronald Beauchamp, City Council Liaison, commented on NB4(a). He recommended that the *ad-hoc* committee obtain the County Commission’s bylaws, and a copy of the minutes from the meeting discussed earlier. He found it hard to believe that the County Commission could eject an appointed liaison without standing.

Susan Corwin, resident of Escanaba, commented on a written comment read during PH1. She refuted claims that chicken odors were to become a problem. Corwin explaining some of the applications for the animals’ droppings, some cleaning practices, and that they could be used as special needs support animals. She then added that any odors from chickens could not surpass odors produced by the paper mill.

COMMISSIONER/STAFF COMMENT & ANNOUNCEMENTS

Anthony announced that a five-year master plan review was to be on the November agenda.

ADJOURNMENT

**A motion was made by Webber to adjourn the meeting. Supported by Harris.
MOTION PASSED.**


The meeting adjourned at 7:37 PM.

EXHIBITS TO THESE MINUTES


- A. Written correspondence from Kelli VanGinhoven, 9/22/2023
- B. Written correspondence from Irma Boudreau, 10/3/2023
- C. Written correspondence from Patricia & Charles Derouin, 10/5/2023
- D. Written correspondence from Betty Giovenco, 10/5/2023
- E. Written correspondence from Elizabeth Gulotty, 10/7/2023
- F. Written correspondence from Betty Giovenco, 10/11/2023
- G. Written correspondence from Joyce Anderson, 10/12/2023
- H. Agenda item NB3 cover page and attachments.

APPROVAL

These minutes approved at the 11-9-23 meeting. BAR



James Hellermann, Chair
Escanaba Planning Commission



Tyler Anthony, Planning & Zoning Admin.
City of Escanaba

From: Kelli van Ginhoven <forthelovecupcakery@gmail.com>
Sent: Friday, September 22, 2023 10:43 AM
To: Tyler Anthony
Subject: Chickens and Ducks

Hello Mr. Anthony and members of Planning Commission.

My name is Kelli van Ginhoven, a current resident of the city of Escanaba and former Planning Commissioner (I miss you all!).

I am writing to insist you pass an ordinance for the allowance of poultry on behalf of my chickens and ducks, who eagerly await the chance to become feathered citizens in our fine city.

As a long time chicken and duck owner, I can attest to their fine attributes. Our chickens provide stress relief, they provide my family with an excellent protein packed breakfast option daily, and they can debug a lawn in a safe and non toxic manner.

My ducks—Sassy Sammy, LaVerne, Maxine, and Luna would love the opportunity to waddle and quack their way to our fair town.

All kidding aside, our poultry make very little disruptions are safely secured in their coop or chicken run every day (they currently still live in Schaffer with my husband and daughter) and can be fenced in to not impede onto our future neighbor's property. They do not 'fly the coop'.

We fully support this effort to amend the ordinance. To be fully transparent, one of the reasons we have not sold our house in Schaffer yet is because our poultry are beloved by our family and we can't see parting from them at this time.

Thank you for your time and consideration.

Kelli van Ginhoven
Bjorn Van Ginhoven
Emily van Ginhoven
Luna and Maxine
Sassy Sammy and LaVerne
Dumb Dumb Dottie
The multiple Buffies
The fantastic Jersey Girls
Bubba the fancy pants Rooster

--

"Oh for the LOVE, eat a cupcake!"

For The Love Of Cupcakes

10/3/23

Received
10/3/2023 - JA

To: City of Escanaba
concerning chickens in town

I do not have a problem with Escanaba citizens having chickens in town.

I think there should be no roosters for obvious reasons & a limit on how many one home can allow.

Thank you.

Terma Boudreau

786 8534

409 So 12th St

Received 10/5/2023
-JA

10/3/2023

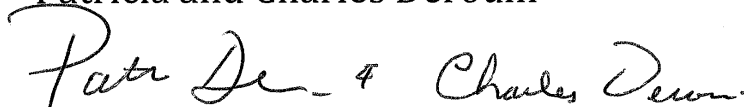
Escanaba City Planning Commission
RE: Poultry in the City of Escanaba

To Whom It May Concern,

I am opposed to allowing Poultry in the City limits of Escanaba, MI. I chose to live in the city to avoid neighbors housing farm animals. I do not want to hear the noise they make, the smell they produce, nor do I want the predator animals coming into the city limits. They also attract snakes and mice.

Sincerely,

Patricia and Charles Derouin



1700 21st Ave S
Escanaba, MI 49829
906-786-7317

222 Lake Shore Drive
Escanaba, Michigan 49829
October 5, 2023

Received 10/5/2023
-A

City Council
City Planning Commission
City Hall
Escanaba, Michigan 49829

Re: Chickens in the City Limits

Dear Council and Commission Members:

As a "farm girl" raised in the Delta County area for my first 18 years, I would like to weigh in on the matter of raising chickens within the city limits.

Am I in favor of allowing chickens and ducks in the city limits? **NO, ABSOLUTELY NOT.**

Having been raised on a farm with a flock of chickens I am aware of how they roam the yard during the day and must be safely housed at night. There is the issue of the possibility of predators as they are easy prey to other animals. They must be kept in a fenced-in area.

Most of all I am concerned about the waste that accumulates. If they are outside, the waste ends up in the yard. As they are housed, the waste accumulates inside and must be disposed of. Where? In our waste bins? This is not a sanitary option.

Anyone who has used our beautiful parks after the geese have been there has observed the mess they make. This was especially apparent as we went to and from the final City Band concert in the park. This is not a sanitary condition.

There are farms and country lands which are appropriate places to handle the essentials of the care of chickens and ducks. Please do not allow them in the city.

For the health of our citizens, I vote **NO** on allowing chicken and ducks and similar fowl within the city limits.

Sincerely,



Betty Giovenco

c: City Manager

PLANNING COMMISSION:

10-7-2023

Received 10/11/2023

-TA

I am a resident with no intention to have chickens or ducks, and I support the ordinance to allow keeping of livestock (presently proposed to be restricted to chicken and ducks in the City).

I support it as written, however I recommend considering the following modifications to the ordinance and its enforcement:

- 1) Yearly renewal seems like a lot; every two years or more is probably fine provided there are no compliance issues or complaints.
- 2) Consider a less onerous path for meat chickens. They are usually kept for a duration of less than ~3 months per year.
- 3) Prohibition on use of attached garage or connection to garage seems unnecessary, so long as it isn't creating a nuisance or fire hazard.
- 4) I support maintaining the ban on roosters.
- 5) Required run square footage per bird seems excessive for chickens
- 6) The portion of the ordinance addressing excrement (h) is a little vague... What will constitute a stockpile vs. "composting", or expected vs. excessive odor? I find it acceptable if the answer is 'at the enforcement official's discretion,' however consistency will matter so addressing this in the public discussion may be helpful.
- 7) Address biosecurity and public health concerns: Require compliance with measures aimed at guarding public health and environmental health, which may in extreme cases necessitate destruction of animals (e.g. due to elevated risk for epizootic illness). Additionally, 1917.1.2 should specify exclusion of vermin AND prevention of contact between livestock and other wild and domestic animals (including via food, supplies, and droppings).

Thank you.

 Elizabeth Gulotty

1012 9th AVE SOUTH

ESCANABA MI 49829

222 Lake Shore Drive
Escanaba, Michigan 49829
October 5, 2023

City Council
City Planning Commission
City Hall
Escanaba, Michigan 49829

Received 10/11/2023
— TA

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Dear Council and Commission Members:

As a “farm girl” raised in the Delta County area for my first 18 years, I would like to weigh in on the matter of raising chickens within the city limits.

Am I in favor of allowing chickens and ducks in the city limits? **NO, ABSOLUTELY NOT.**

Having been raised on a farm with a flock of chickens I am aware of how they roam the yard during the day and must be safely housed at night. There is the issue of the possibility of predators as they are easy prey to other animals. They must be kept in a fenced-in area.

Most of all I am concerned about the waste that accumulates. If they are outside, the waste ends up in the yard. As they are housed, the waste accumulates inside and must be disposed of. Where? In our waste bins? This is not a sanitary option.

Anyone who has used our beautiful parks after the geese have been there has observed the mess they make. This was especially apparent as we went to and from the final City Band concert in the park. This is not a sanitary condition.

There are farms and country lands which are appropriate places to handle the essentials of the care of chickens and ducks. Please do not allow them in the city.

For the health of our citizens, **I vote NO** on allowing chicken and ducks and similar fowl within the city limits.

Sincerely,



Betty Giovenco

c: City Manager

October 7, 2023

Received 10/12/2023
-A

Dear Escanaba Planning Commission,

I have been a homeowner and taxpayer in the City of Escanaba for 36 years. I am proud of the city in which I live. I work hard to maintain my home and property. I am a retired educator and have invested heavily in your children and your future.

Being raised in a rural area it was apparent that zoning and ordinances were not as strict as in the city. A beautiful, well-maintained home could have neighbors that were less than desirable.

Please DO NOT allow chickens to be raised in the City of Escanaba!

My friend has a small flock of chickens in Bark River and has been plagued by animals being attracted to them. She has dealt with skunks, fox, a weasel, coyote, bear and a wild boar. Another has a severe problem with mice and rats since chickens have been added to the property. We DO NOT need these predators and vermin drawn to our city!

Our world is now faced with Global Warming. We have our windows open during the spring, summer and fall months for extended periods of time. Many families and senior citizens do not have air conditioning. With the close proximity of our neighbors on city lots, do we need to breathe the noxious odor of chickens from our neighbors?

The highly pathogenic Avian Influenza has been detected in the US. Would an inexperienced hobby farmer have the knowledge and resources to deal with this if the flock became infected? Do we want to risk bringing Avian Flu to the City of Escanaba?

Tourism is a primary source of revenue for our city and the Upper Peninsula. Do we want tourists to avoid visiting our city, or purchasing a home here due to the presence of chickens in the city? Can we afford to threaten our economy?

Escanaba has always been a leader in being progressive, yet preserving the quality of life we are proud of.

PLEASE DO NOT ALLOW CHICKENS TO BE KEPT IN THE CITY OF ESCANABA!!

Thank you!

Sincerely,

Joyce M. Anderson

Joyce M. Anderson

1812 21st Ave. So.

Escanaba, MI

PLANNING COMMISSION

Agenda Item Report - Thursday, October 12, 2023

NB__ : Interpretation – Ice Cream Shop

Background:

Per Zoning Code sec. 112 (Uses Not Mentioned):

When a use is not expressly mentioned in this Zoning Ordinance , the Zoning Administrator shall make an interpretation as to what district or districts should accommodate the use. The decision shall be based on the intent of each district, similar uses mentioned in a district, and recognized rules of interpretation. The Zoning Administrator's decision shall be appealable to the Planning Commission.

Staff, aka the Zoning Administrator, is seeking the Commission’s use interpretation directly rather than making an interpretation themselves for appeal later.

Issues and Questions Specified:

- What type of use should be defined as an ice cream shop?
- Pending that, should the use be allowed in an “A” zoning district?

Attachments:

1. Memo: Use Interpretation Info
2. Excerpt from City of Escanaba Zoning Code, pg. 5-1 to 5-4

MEMORANDUM

To: City of Escanaba Planning Commission

Date: October 11, 2023

From: Tyler Anthony,
Planning & Zoning Admin.

Subject: Use Interpretation Info

Per Zoning Code sec. 112 (Uses Not Mentioned):

When a use is not expressly mentioned in this Zoning Ordinance, the Zoning Administrator shall make an interpretation as to what district or districts should accommodate the use. The decision shall be based on the intent of each district, similar uses mentioned in a district, and recognized rules of interpretation. The Zoning Administrator's decision shall be appealable to the Planning Commission.

Planning Commission staff, aka the Zoning Administrator, is seeking the Commission's use interpretation directly rather than making an interpretation themselves for appeal later. The use in question is that of an ice cream shop. Currently, the use is not defined in the Code, and the question has been raised as to whether it fits best with an existing use or as something else. Specifically, does an ice cream shop qualify as a convenience store or as a restaurant, or does it qualify as a separate use more related to one or the other?

The Zoning Code provides the following definitions:

Convenience store means a retail establishment offering for sale prepackaged food products, household items and other goods commonly associated with the same and having a gross-floor area of less than five thousand (5,000) square feet.

Restaurant means [an] establishment where food is prepared, sold, and served for consumption either on or off premises.

The following definitions are excerpted from *A Planner's Dictionary*, a resource published by the American Planning Association which compiles definitions used in zoning codes nationwide:

Convenience store

1. Any retail establishment offering for sale a limited line of groceries and household items intended for the convenience of the neighborhood. (*Boulder, CO*)
2. A small-scale food store, usually less than 15,000 square feet in size, generally located in small neighborhood convenience centers. Such stores may have on-site service of food or drink for immediate consumption (*Santa Rosa, CA*)

Restaurant

1. A structure in which the principal use is the preparation and sale of food and beverages. (*Prince William County, VA*)
2. An establishment where food and/or beverages are prepared, served, and consumed, and whose principal method of operation includes one or both of the



following characteristics: (1) customers are normally provided with an individual menu and served their food and beverages by a restaurant employee at the same table or counter where the items are consumed; or (2) a cafeteria-type operation where food and beverages generally are consumed within the restaurant building. *(Cumberland, MD)*

Restaurant, specialty

1. Establishments whose primary business is the sale of a single specialty type of food or beverage that is not considered a complete meal (i.e.: candy, coffee, or ice cream). *(Rancho Mirage, CA)*

Depending on what type of use the Commission deems an ice cream shop to be, the final question is this: does that use belong in an “A – Single-Family Dwelling” district? Please refer to the attached Zoning Code pages for the district’s “intent” and uses currently allowed therein.

TA



Mission Statement

Enhancing the enjoyment and livability of our community by providing quality municipal services.

CHAPTER 5 – RESIDENCE “A” DISTRICTS

Section 501 – General Provisions

501.1 Purpose

The single-family dwelling district is for the purpose of primarily accommodating conventional single-family dwellings.

Section 502 – Principal Uses Permitted by Right

502.1 General

The following uses of land and buildings, together with accessory uses, are allowed in the one-family district:

- A. One-family detached dwellings
- B. Accessory buildings and uses, including swimming pools, customarily incident to any of the above permitted uses.
- C. Gardens, arboretums, nursery, or greenhouses without sales facilities.
- D. Park, playground, school or college stadium or athletic field, golf course.
- E. Telephone exchange where no public business offices and no repair, storage or garage facilities are maintained.
- F. Special Care Facilities subject to the following conditions:
 - 1. A special use permit must be approved by the Planning Commission.
 - 2. The allowable number of total occupants shall not exceed six (6) within any one thousand five-hundred-foot radius.
 - 3. Required area and lot sizes shall be the same as for other residential occupancy requirements within the zoning district.
 - 4. All applicants for special use permits must demonstrate that there will be adequately trained personnel to staff or manage the type of facility being proposed.
 - 5. In Residence A Districts, not more than six (6) permitted within any one thousand five-hundred-foot radius.
- G. Home Occupations. As used in this chapter, a home occupation is an accessory use of the

main dwelling that shall constitute either entirely or partially the livelihood of a person living in the dwelling, provided it complies with all applicable performance standards set forth in this chapter. Home Occupations subject to the following conditions:

- 1. A home occupation shall be conducted within the dwelling unit which is the bona fide residence of the principal practitioner of the occupation.
- 2. All business activity and storage shall take place within the interior of the dwelling unit.
- 3. No alterations to the exterior of the residential dwelling or yard that alters the residential character of the exterior premises is permissible.
- 4. The home occupation shall not generate vehicular traffic beyond eight- trip-ends per day.
- 5. Only off-street parking facilities customary for a residential use and located on the premises may be used.
- 6. No vehicles used in the conduct of the occupation may be parked, kept or otherwise be present on the premises, other than such as are customarily used for domestic or household purposes.
- 7. Home occupations shall be conducted solely by persons residing at the residence, and not more than two (2) such persons shall be employed in the home occupation.
- 8. One (1) sign identifying a home occupation may be used provided is wall mounted on the principal residence and is not more than three (3) square feet with no side dimension exceeding thirty-six (36) inches.
- 9. No sale or rental of goods is allowed on the premises, except as secondary and incidental to the furnishing of a service.
- 10. Instruction in crafts and fine arts are recognized as allowable home occupations if they meet the above conditions.

11. The use shall not generate noise, vibration, or odors detectable beyond the property line.

28. Similar types of businesses as approved by the Planning Commission.
29. The above list is not exclusive.

(a) Permitted Home Occupations

The following are permitted home occupations provided they do not violate any of the provisions of the "A" District, and that they are consistent with State and local licensing requirements:

1. Beauty/barbershop, single chair.
2. Bed and breakfast operation.
3. Catering, home cooking and preserving.
4. Family day care home.
5. Computer programming and services.
6. Contractor or decorator.
7. Direct sale product distribution, e.g., Amway, Avon, Mary-Kay.
8. Taxidermy.
9. Dressmaking, sewing and tailoring.
10. Drafting and graphic services.
11. Flower arranging.
12. Gardening, landscaping maintenance.
13. Home crafts such as model making, rug weaving, lapidary work, jewelry making, woodworking and upholstery.
14. Individual musical instrument instruction, provided that no instrument is amplified.
15. Interior designers.
16. Janitorial and cleaning services.
17. Laundry and ironing services.
18. Locksmith.
19. Mail order catalog services.
20. Office of minister, rabbi, or priest.
21. Offices such as an accountant, architect, bookkeeper, broker, consultant, counselor, dentist, engineer, investment and financial planner, land surveyor, lawyer, physician, psychologist, psychiatrist, and real estate broker.
22. Office of a sales representative or manufacturer's.
23. Painting, sculpturing, photography, or writing.
24. Repair service for small items.
25. Secretarial services.
26. Telephone answering or solicitation work.
27. Tutoring or educational instruction.

(b) Prohibited Home Occupations

The following are prohibited as home occupations:

1. Amusement or dance parlor.
 2. Funeral home or chapel.
 3. Health salons, gyms.
 4. Kennel or other boarding of animals.
 5. Medical or dental clinic, hospital.
 6. Motor vehicle repair, parts sales, upholstery.
 7. Motor vehicle sales.
 8. Motor vehicle fleet storage.
 9. Nursing home.
 10. Private club.
 11. Repair or testing of internal combustion engines.
 12. Restaurant.
 13. Tavern.
 14. Veterinary clinic or animal hospital.
 15. Similar types of businesses. The above list is not exclusive.
- H. Bed and Breakfast Establishment. Bed and breakfast establishment subject to the following conditions:
1. The minimum size of a one-family residential dwelling for a bed and breakfast establishment is two thousand (2,000) square feet of normal residential space, exclusive of garages and storage sheds.
 2. All applicants for a bed and breakfast establishment license must demonstrate that the proposed establishment will comply with Escanaba's Bed and Breakfast Establishment Ordinance.
- I. Adult Foster Care Facilities. Adult Foster Care (state licensed residential facility as defined by MCL 125.5836).

Section 503 – Uses Allowed by Special Land Use Permit

503.1 General

The following uses of land and buildings, together with accessory uses, are allowed in the Single-Family Districts if a special land use permit is issued according to the standards of this chapter:

- A. Clustered single-family dwellings.
 - B. Essential service building, publicly owned buildings.
 - C. Group day care homes.
 - D. Places of assembly.
 - E. Schools.
 - F. Temporary dwelling units.
 - G. Public or parochial schools, colleges, publicly owned and operated libraries, museum.
 - H. Community building or club, except where the principal activity thereof is a service customarily carried on as a business.
 - I. Nursery schools, child care centers, and similar institutions for children of pre-school age.
 - J. Fire and Police Stations.
 - K. Hospital, clinic, convent, home dormitory, or other buildings of like character, occupied, or to be occupied more or less permanently (but not including penal or correctional institutions).
 - L. Convenience Store.
 - M. Auxiliary Dwelling Units; subject to the following conditions:
 1. Auxiliary Dwelling Unit. An auxiliary dwelling is an additional residential unit providing complete, independent living facilities for no more than two (2) people, including provisions for living, sleeping, eating, cooking and sanitation exclusively for occupancy by immediate family members which are directly related to the primary dwelling unit occupants such as parents, grandparents, children or grandchildren or bonafide caregivers to the primary dwelling unit occupants.
 2. Special Land Use Permit. A special land use permit is required to establish an Auxiliary Dwelling Unit.
 3. Specific Restrictions/Criteria. In order to qualify for a special land use permit, the use must be conducted on owner-occupied property zoned Residential District "A" and is limited to one (1) auxiliary dwelling unit only.
4. Owner-occupied shall mean a property owner who makes his or her legal residence at the subject property, as evidenced by voter registration, vehicle registration, or similar means, and actually resides at the subject property more than six (6) months out of any given year.
 5. The use must be contained in a stick-built or prefabricated structure which conforms to the standards of the Michigan Building Code and be attached to the primary dwelling unit on the property. The auxiliary dwelling unit shall not have a separate address or house number.
 6. The number of occupants in the auxiliary dwelling unit is limited to two (2).
 7. The auxiliary dwelling unit must be established in such a way as to minimize its visibility from adjacent streets and properties. The dwelling unit shall not be taller than the allowable building height as defined in Section 508 Building Height of the Zoning Ordinance.
 8. The gross square footage of the auxiliary dwelling unit, excluding parking space, shall not exceed one-half $\frac{1}{2}$ the gross square footage of the primary dwelling unit or seven hundred (700) square feet, whichever is less.
 9. The auxiliary dwelling unit shall comply with all parking requirements for the primary dwelling unit. Any parking provided for the auxiliary dwelling unit shall be served from the same driveway system that serves the primary dwelling unit.
 10. The auxiliary dwelling unit must meet the setback requirements of the primary dwelling unit and shall not cause the lot coverage requirement of the zone to be exceeded.
 11. Any auxiliary dwelling unit established in a primary structure shall not contain more than one (1) bathroom, one (1) kitchen, one (1) utility room, two (2) bedrooms, and one

(1) living or combination living and dining room.

- 12. The Special Land Use Permit must be recorded with the Delta County Register of Deeds Office prior to issuance of a final land use permit for the auxiliary dwelling unit, to ensure understanding and compliance with this requirement.

Section 504 – Accessory Uses Permitted in a Residence A District—When Located on the Same Lot with the Principal Use

504.1 Allowed Uses

Uses customarily incident to any of the permitted uses and located on the same lot therewith, provided all area and yard requirements are met.

Section 505 – Yards and Setbacks

505.1 Front Setback

Front setbacks shall be twenty-five (25) feet or thirty-five (35) percent of the depth of the lot, whichever is less restrictive, but not less than fifteen (15) feet. However, for lots located on the same side of the street and between the same consecutive intersecting streets as other occupied lots of which at least fifty (50) percent have front yards in depths other than that required above, the front setback shall be not less than the average depth of those front yards.

505.1.1 Corner Lots, Through Lots

On a corner lot or through lot, setbacks which are taken from front lot lines other than the primary front lot line shall not reduce the buildable width of any lot to less than thirty (30) feet. However, such setbacks shall be eight (8) feet minimum.

505.1.2 Front Yard Use

The front yard shall only be used for off-street parking when winter parking restrictions are in effect. The front yard shall remain open space, unoccupied and unobstructed from the ground upward except for landscaping, plant materials, or vehicle access drives.

505.2 Side Setback

Side setbacks shall be calculated as ten (10) percent of the width of the lot individually, with a minimum of four (4) feet and a maximum of fifteen (15) feet. For each building story over two (2), an additional four (4) feet shall be added. Together, side setbacks shall equal twenty-five (25) percent of the lot width, but not more than forty-five (45) feet.

505.3 Rear Setback

Rear setbacks shall be twenty (20) feet, with an additional four (4) feet for each building story over one (1).

505.4 Other Requirements

505.4.1 Storage

Storage of a boat, motor home, camper, utility trailer or other recreational vehicle or equipment is limited to rear and side yard only. Storage shall mean parking the vehicle or equipment in an area unused for the purpose for which it was designed for a period of thirty (30) consecutive days or more.

505.4.2 Lots Along Railroad Right-of-Way or Property

Any lot created or recorded after October 1, 2003, that is adjacent to or along a railroad right-of-way, shall not be used for any residential purpose unless it has a depth of at least two hundred fifty (250) feet.

Section 506 – Encroachments Into Setbacks

506.1 Projections Into Required Yards

Outside stairways, fire escapes, fire towers, chimneys, platforms, enclosed balconies/porches, boiler/furnace flues, eaves, sills, belt courses, cornices and other projections shall be considered part of the building, subject to the setback requirements of the building.

Exceptions:

- A. Terraces, patios, decks, uncovered and unenclosed porches which do not extend more than thirty (30) inches above grade at the nearest side property line may project into a