



# Wexford Joint Planning Commission

c/o Cherry Grove Township  
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**Zoning Board of Appeals  
Case # ZBA-2023-03  
APPEAL OF AN ADMINISTRATIVE DECISION**

1. Application

Owner(s):	Northern Michigan Rentals, LLC Drew Bismack P.O. Box 495. Cadillac, MI 49601
Agent(s)	McCurdy Wotila & Porteous PC Cynthia Wotila 120 W. Harris Street Cadillac, Michigan 49601
Site Address,	3044 S 29 Road Cadillac, MI 49601
Parcel ID#	2210-20-1101 - Selma Township
Zoned:	Rural Residential – Airport Overlay
Site Plan:	[not required]

2. Development Proposal

2.1 Property Description – N 320.1 FT OF E 330 FT 2.5 A. M/L SEL. SEC. 20 T22N R10W -CAPS-

**Plat Map Image:**



2.2 Action Report and Issue before the ZBA– A parcel of land where storage units were being advertised and the Wexford Joint Planning Commission’s zoning administrator, Mr. Robert (Bob) Hall (hereinafter Bob Hall), determined that it was not a use permitted by right or special use. The property owner claimed “mini-storage” was the historical use and was permitted by Wexford County. Materials submitted by Attorney had nothing backing up the claim. There was a proposal from a building contractor for a storage building. But Wexford County Zoning Ordinance #5 (Hereinafter Wexford #5) never allowed or permitted such a use for commercial storage or rental units. So, they sought a determination from ZA to find if that was a non-conforming use. To be considered a non-conforming use, the use needed to be lawful in the first place.

2.3 Background:

1. This property is approximately 2.43 acres. It was purchased on 5/12/2017 by Northern Michigan Rentals, LLC, which was originally owned by Gerald and Veronica Miller. The Millers were the previous owner of the current property and sold the property to Northern Michigan Rentals. The Millers still own the 2.43 acres adjoined south of this property, which was Homesteaded on 6/25/1998.
2. The property is located in the R/R Rural Residential District. Under the previous owners, the property was located in the Forest-Recreational District of the Wexford #5.

2.4 Current Narrative:

1. The owner of Northern Michigan Rentals, LLC, Mr. Andrew Bismack, through his attorney, Mr. Michael Figliomeni, wrote Bob Hall on January 17, 2022 a letter admitting that Mr. Bismack “operates a self-storage facility on the property.” He then claimed that the previous owner of the property operated a “storage facility for over two decades.” This claim was without any evidence given as to any advertising or Special Use Permits previously given from Wexford County Zoning Department before the WJPC was formed. (Attached letter Exhibit A.)

2. On January 19, 2022, Attorney Figliomeni called Bob Hall at 9 a.m. and they discussed the “spirit of the zoning ordinance” when it comes to “Refrigerated Warehousing Storage” as well as “Farm Product Warehousing.” Mr. Hall stated that neither of those listed in the Rural Residential District were even close to “Self-Storage Units” in the North American Industry Classification Systems (NAICS\*). Self-Storage Units are under a completely different category, while the warehousing of agricultural products is, according to the Generally Accepted Agricultural Management Practices (GAAMP’s) available in all zoning districts in the state of Michigan.  
*(\*Note: NAICS is section 504 of the Wexford Joint Zoning Ordinance.)*
3. In an email dated February 4, 2022, Mr. Bismack wrote to Mr. Hall at the WJPC email address the following: “Good morning! Mr. Figliomeni and I wanted you to know I’m making arrangements to move storage sheds.” Mr. Hall’s response the same day was also brief: “Drew – Thank you for the email noting your intent. I am copying the Assessor for Selma Township so that they are aware as well. Let me know if we can be of further assistance. Bob”.  
Barbie Eaton, assessor of Selma replied to both: “Thank you for letting me know.”
4. A follow up email by Mr. Bismack was sent on August 15, 2022 to Bob Hall and Barbie Eaton which stated that he was “down to 2 more sheds to move!” He stated that, “We have one difficult tenant left to deal with and then we can get the last two sheds moved. I truly appreciate your cooperation and patience with getting this mess cleaned up.” (Email string included as Exhibit B)
5. Almost a year went by before an attached letter to an email from Maureen Jones, paralegal to both Michael Figliomeni and Cynthia Wotila, from Attorney Wotila to Mr. Hall on July 7, 2023. This letter stated that her “office” represents Andrew Bismack and requested a determination “that both the use by Gerry Miller and Northern Michigan Rentals, LLC of the aforementioned property as a storage facility is a “legal nonconforming use,” as it was in existence prior to the current zoning.” (Letter included as Exhibit C)  
*(NONCONFORMING USE means structure, building, plot, premise or land occupied by a use that does not conform to the regulations of the district in which it is situated and lawfully existing on the effective date of this Ordinance. **Wexford Joint Zoning Ordinance, January 1, 2017**)*  
*(NONCONFORMING USES: A lawful use of a building, structure or land lawfully in existence on the effective date of this Ordinance, or amendments thereto, which no longer conforms to the use regulations of the zoning district in which it is located. **Wexford County Zoning Ordinance #5, adopted February 15, 1995**)*
6. On July 12, 2023, Mr. Hall responded to Ms. Wotila’s letter requesting a determination on the property. The letter established a definition for a use to be nonconforming, that “it must be determined to have been lawful at the time of its establishment.” Mr. Hall stated that his research showed that storage units were not permitted in that zoning district (Forest-Recreational District in

- Wexford Zoning Ordinance number 5), therefore, they were in violation at the time they were first rented as a commercial storage building. (Exhibit D)
7. On July 27, 2023, Ms. Wotila responded by adding “documentation” which purported to meet the conditions of Mr. Hall’s letter of July 12. The extra documents were, 1) Wexford County Zoning Permit Application, 2) Wexford County Zoning Permit No. 4485 receipt for payment of April 3 1996, 3) Zoning Certificate, and 4) a Building Estimate Proposal from Pioneer Pole Building in Harrison, Michigan. (Packet is Exhibit E)
  8. A response letter dated August 11, 2023 to Maureen Jones, carboned to Attorney Wotila; Mr. Hall answered the list of documents above as to how the “documentation” did not show a “legal nonconformity” to the property. (Exhibit F)
  9. Also on August 11, 2023, moments after Mr. Hall sent the above email, Attorney Wotila delivered a letter to the WJPC office for an appeal to the Zoning Board of Appeals along with an application for an appeal to the ZBA. In the letter it states “We reserve the right to submit additional information for the record.” Because the check given was not the right amount, but was over what the ZBA fee is, and we wanted to give plenty of time for Attorney Wotila to submit additional information, we decided to hold the matter before the ZBA in December. This letter also had all of the extra documents that were in the July 27 letter attachments. (Exhibit G)
  10. Public Hearing Notification was published in the Cadillac News on November 28, 2023, 22 days in advance of any required public hearing.
  11. 300 Foot notices sent out on November 29, 2023.

**Image of Public Notice:**



### 300' Notice Map-GIS



12. Staff Report, Exhibits, Minutes of previous meeting, and agenda sent out on December 8, 2023.
- 2.5 Procedure for a zoning administrator when called about a violation of the zoning ordinance concerning a wrong land usage under the current ordinance.
1. Check the ordinance under the proper zoning district to see if it is a permitted use or a special use. In this case the storage buildings came to our attention via the assessor from Selma Township desiring to know how this is to be assessed with the expansion of 15 new buildings in a residential or non-commercial area.
  2. Determine if the usage is listed in the ordinance under permitted use or special use. Since it was not a listed usage as either a permitted use or a special use, notify the owner of the property that their property is not a usage in the Rural Residential Zoning District.
  3. Since this property owner inquired about this determination via his first attorney, Mr. Figliomeni, it was found that the previous owner of the property, Mr. Miller, also used the property for “a storage facility for over two decades prior.” Therefore, the claim of a “nonconforming use” was given. The zoning administrator then attempts to find out if the usage of a “storage facility” was permitted under the zoning ordinance that was in existence “two decades prior.” This would have been the Wexford **County** Zoning Ordinance #5 (hereinafter Wexford #5), enacted in 1995, one year prior to Mr. Miller’s claim. Wexford #5 had this property in its “Forest/Recreational” zoning district. The Forest/Recreational district does not list “Self-Storage Buildings” or “Mini-storage buildings” in its list of permitted, conditional, or special usages. The only zoning district in Wexford #5 that does list “mini-storage buildings” is the Heavy Commercial district under permitted usages. Since it was determined that the usage of self-storage buildings was not a use under Wexford #5, it was not considered a legal nonconforming use for the property.

2.6 Arguments from the Appellant with answers

1. Wexford County Permit Application – The application shows only that a 24 x 40 Pole Building was presented to the Wexford **County** zoning administrator. If it had been an application for “mini-storage buildings,” the zoning administrator would have either denied it or refused the application because the use was not listed in the Forest-Recreational district. If it were for “mini-storage buildings” in a commercial zone, another permit would have been filled out and it would have gone before the Wexford County Planning Commission as per instructions in Wexford #5. Also, the application lists 3082 S 29 Road as the address, as this pole building was built before the properties were split and this was an allowable accessory building to the house according to Wexford #5.
2. Receipt from the Wexford **County** Zoning Department – This receipt was in payment for the \$25 for the building permit for the pole building. There is nothing on it that presents this as a commercial storage building to be rented out.
3. Zoning Certificate – This final certificate to build the structure only includes a “24’ X 40’ Pole Building” as a “modification to the attached application.”
4. Two Proposals from Pioneer Pole Building, one for cement and the other for the building. - Proposals from a contractor or supplier cannot be considered as allowing “mini-storage buildings” on the owner’s property at any time under any ordinance.
5. Letter from the previous owner of the property, Mr. Gerry Miller. - In his brief letter, he states that he “represented to the zoning administration that the intended use was for a mini storage unit.” This cannot be the determination of the usage, because allowing such a use in absence of proper permitting of a special use by the Wexford **County** Planning Commission, which would have had all special uses and site plans of any commercially used buildings come before them, and not just the zoning administrator.

**We therefore present that attached Resolution #ZBA-2023-01 to be adopted to support the decision of the Wexford Joint Zoning Board of Appeals to uphold the decision of the Zoning Administrator determining that the uses and buildings and structures on parcel #2210-20-1101 in Selma Township are NOT deemed to be nonconforming and are, in fact, violations of the Wexford Joint Zoning Ordinance.**

Respectfully submitted for consideration by the Wexford Joint Zoning Board of Appeals,



Dr. Ben Townsend  
Assistant Zoning Administrator  
Wexford Joint Planning Commission