

August 20, 2020

Minutes of the Board of Adjustment meeting and Public Hearing with site inspection conducted on August 6, 2020 at 2089 Town Road L in the Town of Florence, Florence County, WI.

Vice-Chairperson Dennis Christian called the meeting to order and took roll call.

Members present: Mike Bednarski, Dennis Christian, Holly Stratton

Members absent: None

Present at site visit: Greg Seibold - Seibold Law Office, Tim Bomberg - Town of Florence Chairperson, Walter Mitchem, Ken Ivanoski, Scott Wolf - Zoning Administrator and Trish Kelly - Assistant Zoning Administrator

Present at Public Hearing: Steven Garbowicz - Corporation Counsel, Greg Seibold - Seibold Law Office, Tim Bomberg - Town of Florence Chairperson, Walter Mitchem, Frances Mitchem, Ken Ivanoski, Scott Wolf - Zoning Administrator and Trish Kelly - Assistant Zoning Administrator

Vice-Chairperson Dennis Christian asked for a motion to approve the agenda, **motion by Mike Bednarski to approve the agenda, second by Holly Stratton, vote taken, all ayes, motion carried.**

*Site inspection of property with discussion.* Committee members reviewed the site. There were comments made as to how the trailer could be removed from the property with the existing deck and the turn radius with relation to the driveway and trees in the area.

**Motion by Holly Stratton to adjourn site inspection and reconvene in the Courthouse at 501 Lake Avenue, Town of Florence, Florence County, WI, second by Mike Bednarski, vote taken all ayes, motion carried.**

Vice-Chairperson Dennis Christian asked for a motion to approve the minutes of the meeting and public hearing conducted on July 22, 2020. **Motion by Holly Stratton to approve the minutes of the meeting and public hearing conducted on July 22, 2020. Second by Mike Bednarski, vote taken all ayes, motion carried.**

There were no persons wishing to address the committee on other zoning related concerns.

Vice-Chairperson Dennis Christian announced *Public Hearing APL-20200001 regarding the re-hearing of Appeal (APL-20170001) as ordered by the court.* The applicant/appellant is appealing the decision of the Florence County Planning and Zoning Committee to the Board of Adjustment for the denial of Conditional Use Permit CUP-20170012. Property location is part of the NE ¼, NE ¼, Section 30, Township 40 North, Range 19 East, Town of Florence, Florence County, WI. Property address is 2089 Town Road L. Request submitted by Gregory P. Seibold, Seibold Law Firm for Susan Veselik.

There was no new written or oral correspondence.

Greg Seibold, Attorney for Susan Veselik said we are here after an appeal in circuit court. First of all, the issue is whether my client should even be required to seek a conditional use permit. Second of all, if she is required to, does she qualify for a conditional use permit. The question is whether his client, Ms. Veselik is lawfully allowed to continue to use her camping trailer on her parcel of land where we just did the site visit. This is an activity Ms. Veselik has engaged in for almost twenty years. In addition, her predecessor did exactly the same thing. This parcel has been used with a camping trailer in excess of twenty years. In 2016/2017, Ms. Veselik made some improvements to this parcel to better accommodate the use of the camping trailer, which included construction of the covered deck, installation of a sanitary system and electric. All the improvements have been approved and there is nothing unlawful about those improvements. The existence of the improvements is not an issue today. However, Seibold noted that all of the improvements were made in reliance on the fact that for in excess of fifteen years prior to that, Ms. Veselik had been using a camping trailer and the improvements were made in anticipation of being able to continue using this parcel as it has been used in excess of twenty years.

Seibold went on to say the issue came before the zoning committee because some neighbors complained they didn't like the improvements that were made and objected to the camping trailer. The issue of the improvements was resolved in favor of his client and the improvements are legal. The Zoning Committee decided my client was not entitled to continue using her camping trailer on her parcel. The Zoning Committee had one rationale, the neighbors had complained that the camping trailer is in violation of the deed restrictions. Therefore, she applied for a Conditional Use Permit as suggested by the Zoning Office. The purported prohibition in the deed restrictions was cited as a basis to deny that Conditional Use Permit.

Ms. Veselik appealed the Zoning Committee decision and the Board of Adjustment Committee heard the appeal. The Board of Adjustment Committee correctly recognized that reliance on deed restrictions is not a reason to deny the Conditional Use Permit. The Board of Adjustment did say this is a temporary use under the Zoning Ordinance which requires that there is an annual fee paid, the camping trailer is allowed for three years while my client could come up with a proposal for a permanent structure and that was the resolution. This decision was then appealed to the Circuit Court.

Seibold's argument is that this particular parcel is in A-4 Limited Agricultural District. There are different conditions that apply to A-4 Limited District than applies to an A-3 or A-4 General Agriculture District. That argument was rejected by the Zoning Administrator at the Board of Adjustment meeting on the grounds that back in 2003 when the ordinance was redone, the A-2, A-3 and A-4 labels are just labels for the General Agriculture District, as the zoning maps had not been changed to reflect the new labels. Literally, the argument was that the actual provisions of the ordinance do not apply. That issue is still before the Board of Adjustment as it is essential to the arguments that he will reiterate today. If there is a new zoning district and this comes within that district, the new zoning district should be followed.

A camping trailer under Section 3.20, A-4 Limited Agriculture District, E. (2) is the zoning provisions that apply to what you can do in an A-4 Limited Agriculture District. Sub department E. Permitted Uses, (2) Camping trailer, and houseboat parking that is not intended or used for living purposes. Seibold argued that through statutory construction of an ordinance, the placement of the comma would suggest that a camping trailer is a permitted use. Seibold then went on to Section 6.16 Temporary Uses which comes into play and deals with a conditional use permit to apply for and receive a conditional use permit in the Open Forest and General Agriculture district, he argued that section 6.16 Temporary Uses does not apply as camping trailers is a permitted use under Section 3.20, E. (2).

At this point, Seibold talked about grandfathering and called Ms. Veselik on the speaker phone, Ms. Veselik said when they bought the property back in August of 2001, the previous owner did have a camping trailer on the property and the Veselik's continued to use the property in that manner. Shortly after purchasing the property, the Veselik's replaced the existing trailer with a pop-up trailer, and in 2015 purchased the new camping trailer that is currently on the property.

Steve Garbowicz asked Ms. Veselik how much time in the course of a calendar year does she use the property. Ms. Veselik stated between June and September, two weekends a month. Dennis Christian asked if she has ever removed the camping trailer from the property for any amount of time. Ms. Veselik replied no. The phone conversation ended. Seibold then went into Section 9.0 Nonconforming Uses and Structures and argued that the use existed prior to the adoption of the Ordinance and therefore may be continued.

In Summary, Seibold argued his client's activity is a permitted use, as camping trailers are a permitted use under the A-4 Agriculture District. Even if it wasn't, his client is not required to get a conditional use permit because a conditional use permit is only required in a General Agriculture District, and his client's property is not in a General Agriculture District. His client's use of her parcel is a nonconforming use that has existed prior to the adoption of these ordinances and therefore she is entitled to continue using this property as she has in the last twenty years. Seibold read a letter from Ms. Veselik into the record, stating she felt she was discriminated against because she is a woman. The letter was not provided to the Zoning Office by Seibold, for the record.

Neighboring property owners, Walter and Frances Mitchem, and Ken Ivanoski were present and voiced their concerns regarding decreased property values because of the camping trailer, and that they had to acquire the proper permits and uphold their deed restriction on their property.

Steve Garbowicz, Corporation Counsel said in response, he had sent a letter to Scott Wolf, Zoning Administrator with issues of his reading of Judge Stenz's decision. In the letter were items the Judge was looking for from the Board of Adjustment in a re-hear of this case. Not to say, that the Board has to make the findings that he or Wolf would suggest. The Board is able to make a finding that this camping trailer is permitted in A-4, you can make a finding that the camping trailer is grandfathered, or make a finding that Section 6.16 does not apply because the ordinance refers to General Agriculture. Unfortunately, when the ordinances were amended the County should have corrected some of the terminology that appears in the ordinances to make them work better together. Non the less, he doesn't think there is any question that this area is zoned A-4. In his opinion, the comma that Mr. Seibold refers to and which he uses as a stop point in that particular section of A-4, he would disagree with, as he doesn't think it was meant that a camping trailer and the rest of that clause or sentence is only applicable to houseboat parking. He would find it rather unusual that someone would park a houseboat on land and then live in it. Garbowicz argued that the comma does not limit the living to just houseboats, that it is applicable to camping trailers also. In other words, camping trailers and houseboats can be parked for storage but cannot be lived in.

Garbowicz expressed to the Board of Adjustment that the findings that they need to make are that a camping trailer is what we are dealing with here. And secondly, whether or not it is a permitted use in A-4 as it is being used as the evidence suggests. He doesn't think this is a dwelling and does not believe the Board needs to make a finding on this. However, if the Board finds a camping trailer is not a permitted use and go to Section 6.16, their argument is because the terminology is General Agriculture District and not specifically referring to A-4, that you really can't make that finding, you can't issue a conditional use permit under that section because it is not applicable. Garbowicz said he feels otherwise, as it would be his suggestion that when the Ordinance refers to General Agriculture District, it is referring to a whole chapter and not just a particular section. His argument would be that if it was referring to a particular section, that section would have been stated, it is not. In his opinion, it is referring to a chapter and therefore A-4 is not applicable, Section 6.16 is and therefore we are into the conditional use permit. As to Grandfathering, there is some suggestion that this camper trailer has not been placed, attached, left at this site on a year round basis for apparently at least most of the time that the Veseliks have owned the property. By what appears to be the evidence, the camping trailer has been there on a rather more permanent basis since 2015 and therefore, he would suggest that Grandfathering is not applicable because it was never there on a year round basis before. They removed it and went home with it, that doesn't give the camping trailer Grandfather status just because you bring something to a site and use it for a weekend or a week, does not necessarily cause the Grandfather concept to attach. Therefore, he does not believe the Grandfathering is applicable here.

In summary, Garbowicz does believe that the A-4 Zoning District is what is applicable and that camping trailers are not permitted in that area. The camping trailer is not to be used for living purposes even though their usage is a couple weekends a month or a few months of the year, that would still be living and that is not permitted in A-4. Therefore, Section 6.16 would apply and the issue ultimately becomes, is a conditional use permit required and do they qualify. These are the findings the Board of Adjustment needs to look at in this manner.

**Following is the Board of Adjustment Decision on the re-hear of Appeal-20170001 on August 6, 2020 as ordered by the court.**

Motion by Holly Stratton that under Section 3.20 E. (2), this camping trailer is intended or used for living purposes, second by Mike Bednarski. All voted aye.

Motion by Dennis Christian that under 3.20 E. (5) this is a camping trailer, as it has wheels and is not a permanent dwelling. Therefore, not a permitted use in the A-4 Limited Agriculture Zone, second by Holly Stratton. All voted aye.

Motion by Dennis Christian that 6.16 Temporary Uses is applicable as the camper trailer has been on the property for more than thirty (30) consecutive days, second by Mike Bednarski. All voted aye.

Motion by Dennis Christian that Section 6.16 Temporary Uses does apply in this situation and is applicable that the applicant apply and receive a Conditional Use Permit under Section 6.16 A. (1) (a) in order to maintain the camping trailer for more than 30 consecutive days, second by Mike Bednarski. All voted aye.

Motion by Mike Bednarski that the replacement of the camping trailer is not grandfathered, second by Holly Stratton. All voted aye.

Motion by Dennis Christian that the entirety of Section 6.16 of the Comprehensive Zoning Ordinance, at the time of application, be applied and that the remainder of the Conditional Use Permit is granted, second by Mike Bednarski. All voted aye.

**Motion by Holly Stratton to adjourn, second by Mike Bednarski, vote taken all ayes, motion carried.**

Respectfully submitted,

Scott Wolf,  
Zoning Administrator

RW/tk