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Hal Wolfe
2045 McKinley
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RE: Nonconforming Use – Travel Trailer – Opinion

Mr. Wolfe:

You have asked me to give my opinion regarding the “grandfathered” nonconforming use – specifically, the use of a mobile trailer on your property, in the event you chose to remove it from time to time from the property in order to use it as a travel trailer.

MCL 125.3208 states that “[i]f the use of a dwelling, building, or structure or of the land is lawful at the time of enactment of a zoning ordinance or an amendment to a zoning ordinance, then that use may be continued although the use does not conform to the zoning ordinance or amendment.” Furthermore, “[t]he elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for public use.” “The legislative body may provide in a zoning ordinance for the completion, resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in the ordinance.”

In short, nonconforming uses are not “abandoned” merely because the use is discontinued on the property for brief period of time. Abandonment consists of both nonuse and an intent to abandon the use. *Dusdal v Warren*, 387 Mich 354, 360, 196 NW2d 778 (1972), states the general proposition that “[a]bandonment in the contemplation of the law is something more than mere nonuser. It is rather a nonuser combined with an intention to abandon the right to the nonconforming use. The burden of proving abandonment was on the city.” See also *Livonia Hotel, LLC v City of Livonia*, 259 Mich App 116, 673 NW2d 763 (2003).

Zoning ordinances can contain provisions that terminate nonconforming uses in the event of a specific time-period of nonuse. *Sinclair v City of Ecorse*, 561 F Supp 2d 804 (ED Mich 2008), held that the right to a nonconforming use was extinguished where (1) plaintiff purchased property at a Wayne County tax sale (because foreclosure eliminates all rights the previous owner had in the property) and (2) the zoning ordinance provided that nonconforming uses were terminated after six months of continuous vacancy, implicitly assuming that the vacancy period was dispositive of both the nonuse and “intent” factors. In *Sinclair*, the nonuse had occurred before the tax sale and the ordinance provision specifying “abandonment” after six months of nonuse had not been contested prior to the sale—a fact that led the court to conclude that, based on the tax sale, the purchaser had no property right in the nonconforming use.

Eveline Township Zoning Ordinance, section 9.9 states:

If a property owner has an intent to abandon a nonconforming use, building or structure and in fact abandons this nonconforming use or structure for a period of (1) year or more, then any subsequent use of the property or structure shall conform to the requirements of this Ordinance. When determining the intent of the property owners to abandon a nonconforming use, building or structure, the zoning administrator shall consider the following factors:

- A. Whether utilities, such as water, gas, and electricity to the property have been disconnected.
- B. Whether the property, buildings, and grounds have fallen into disrepair.
- C. Whether signs or other indications of the existence of the nonconforming use have been removed.
- D. Whether equipment or fixtures necessary for the operations of the nonconforming use have been removed.
- E. Other information or actions that evidence an intention on the part of the property owner to abandon the nonconforming use, building or structure.

Use of your trailer on the property is deemed nonconforming because it was being used prior to the enactment of the relevant zoning ordinances. The trailer is not being deemed a permanent structure; rather, the use of a traveling trailer on the premises existed prior to the ordinance enactment. It is entirely conceivable that prior use of the trailer included occasional travel to and from the property, consistent with its nature.

However, I do recognize the power of your argument that you may have treated it more as a permanent dwelling, such as by removing wheels, constructing a foundation of sorts and steps to the doorway, hooking it up to power (although the last two items certainly would be consistent with use as a travel trailer as well, and it can be argued that a typical use of a travel trailer also includes periodic "foundational setup," so to speak). So long as the trailer can be put into use as a travel trailer again with relative ease, I think it entirely arguable that your use has been consistent with its nature, over time. It would certainly help if it could be truthfully said that it has been moved from time to time.

It also should be recognized that, under the zoning ordinance stated above, such "abandonment," even if an intent to abandon was determined by the zoning administrator, would have to exist for a period of "a year, or more." Removing it for a few weeks at a time should not therefore rise to the level of an intentional abandonment of the nonconforming use.

Notably, without having received a "Class A" nonconforming designation, the "nonconforming use, building or structure may not be replaced by another Class B nonconforming use, building or structure." Section 9.6D. I believe the zoning administrator would likely argue that once the travel trailer is mechanically unsound it cannot be replaced. I would therefore recommend that you consider applying for Class A designation under section 9.4, arguing that it is not a permanent dwelling, rather, it is a travel trailer that has been used as such since before the enactment of the zoning ordinance. That way you can replace it from time to time.

Conclusion

Applying the facts of your case to the law stated above, I conclude that it is unlikely that a zoning administrator would prevail in court with an argument that an intent to abandon the nonconforming use of the travel trailer on the property simply because you moved it, even off the property, from time to time, as that is entirely within its nature, and it has never been removed for a year or more.

Very truly yours,

MARK J. HILAL, P.C.

A handwritten signature in black ink, appearing to read "Mark Hilal", written in a cursive style.

Mark J. Hilal