



June 6, 2022

Hal Wolff
2045 McKinley Road
Ypsilanti, Michigan 48197
VIA EMAIL: runlikehal@yahoo.com

RE: Nonconforming use of RV on your property on Cedar Lane in Eveline Twp

Mr. Wolff:

I have performed a legal review and analysis of your nonconforming and historic use of a recreational vehicle ("RV") on your property located in Eveline Township, Charlevoix County, Michigan ("the Property"). I have reviewed the Eveline Township Zoning Ordinance ("ZO"), the Michigan Zoning Enabling Act ("MZA"), and the relevant case law, and ***I believe that your nonconforming use rights remain fully intact; and further, these rights are not altered due to the recent replacement of the RV, nor would they be affected by future replacements of an RV of similar size.***

MCL 125.3208(1) provides in pertinent part 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." In *Century Cellunet of Southern Michigan Cellular Ltd v. Summit Twp*, 250 Mich App 543, 546-547; 655 NW2d 245 (2002), the Michigan Court of Appeals explained the nature of a nonconforming use:

"A prior nonconforming use is a vested right in the use of a particular property that does not conform to zoning restrictions, but is protected because it lawfully existed before the zoning regulation's effective date."

City of Troy v. Papadelis (On Remand), 226 Mich App 90, 95; 572 NW2d 246 (1997). "[I]t is the law of Michigan that the continuation of a nonconforming use must be substantially of the same size and the same essential nature as the use existing at the time of passage of a valid zoning ordinance." *Norton Shores v. Carr*, 81 Mich App 715, 720; 265 NW2d 802 (1978). The nonconforming use is restricted to the area that was nonconforming at the time the ordinance was enacted. *Heath Twp v. Sall*, 442 Mich 434, 439; 502 NW2d 627 (1993).

In applying the case law and statutory provisions cited in Eveline Township Zoning Code included in the Appendix (below) to your circumstance, I believe that the actual nonconforming "use" of your Property for the placement of an RV remains intact and thus protected. To begin, this situation is clearly a "nonconforming use" and not a "nonconforming structure/building." The definitions listed above do not include RVs as "structures" or "buildings;" instead, the definition

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of “nonconforming use” broadly fits your fact pattern so long as the use of the RV was legal at the time it first began. You indicated that the use of an RV on your Property predated the enactment of the ZO (or any other laws prohibiting that use at the time), satisfying this first requirement for the establishment of a nonconforming use under the MZA, ZO, and common law.

Further, per your testimony that there has been a continuous history of parking an RV on your Property, preserving the nonconformity through the years. As such, the second element relating to continuity would be fulfilled. Moreover, since your nonconformity deals with a “use” of the land to park an RV, and not a structure or building erected thereon, it cannot be eliminated simply by replacing the actual RV. In fact, the law simply demands that the nonconforming use: (1) not be expanded; (2) be of the same essential nature; and (3) not be moved to other portions of the property. *See Norton Shores, supra*. You proved that the new RV is of a similar size and nature as its predecessors that have been used on the Property. As such, these elements are fulfilled. Finally, you advised that the RV is located in the same general location as the previous RVs. These conditions satisfy the final element for the preservation of the nonconforming use. Taken altogether, your use of the new RV on the Property appears to satisfy all of the requirements above, making it simply a continuance of the nonconforming use, rather than a replacement of same.

Under the law, the “use” remains the same if the size is not expanded and the location and nature of the use remain the same. Therefore, based on my review of your testimony, the MZA, ZO, and the relevant case law, I am of the position that your use of the subject RV is protected as a nonconforming usage allowing you to legally maintain the use of an RV on your Property.

Sincerely,

KUHN ROGERS PLC



David P. Glenn
Direct Dial: (231) 947-7901 x104
dpg@kuhnrogers.com

DPG:dpg

Appendix:

Section 9.6 of the ZO covers “Class B - nonconforming uses,” and provides in relevant part:

A. A Class B nonconforming use, building or structure that is damaged by fire, collapse, explosion, an act of God, or an act of the public enemy following the effective date of this Ordinance, or any subsequent amendment, may be reconstructed, repaired or restored, and resumed under the terms and conditions of this subsection. Except as provided herein, if a nonconforming building or structure can be reconstructed, repaired or restored in complete conformance with this Ordinance, then such complete conformance shall be required. However, if the Planning Commission finds that the cost of complete conformance with this Ordinance would be unreasonable under the circumstances, then the nonconforming building or structure shall be reconstructed, repaired or restored to the greatest degree of conformance found by the Planning Commission to be reasonable. In addition, any such reconstruction, repair and restoration, or resumption shall be completed within thirty-six (36) months following the damage, or other reasonable time as determined by the Planning Commission.

B. Except for repairs and maintenance authorized under Section 9.3 above, a nonconforming building or structure or a building containing a nonconforming use shall not be enlarged or altered, unless such enlargement or alteration is in complete conformity with the provisions of this Ordinance.

C. A nonconforming use shall not be extended to any portion of the lot or extended throughout any part of a building in which it is located that was not lawfully occupied by such a nonconforming use on the effective date of this Ordinance, or any subsequent amendments, unless such extension is in complete conformity with the requirements of this Ordinance.

D. A Class B nonconforming use, building or structure may not be replaced by another Class B nonconforming use, building or structure. However, a Class B nonconforming use, building or structure may be replaced with a Class A nonconforming use, building or structure if the Planning Commission finds, (following the procedures in subsection 9.4B above), that the new nonconforming use, building or structure qualifies for a Class A designation and that the new nonconforming use, building or structure will not increase the extent or intensity of the nonconformity on the property.

Furthermore, the ZO (Article 10) provides the following relevant definitions:

NONCONFORMING STRUCTURE. Any structure or portion thereof lawfully existing on the effective date of this Ordinance or amendments thereto which does not conform after the passage of this Ordinance or amendments thereto with the

dimensional restrictions of the district in which it is situated.

NONCONFORMING USE. The use of land or the use of any building or portion thereof lawfully existing at the effective date of this Ordinance or amendments thereto which does not conform after the passage of this Ordinance or amendments thereto which does not conform to the use regulations of the zoning district in which it is located.

STRUCTURE. Any production or pieces of work artificially built up or composed of parts joined together in some definite manner, and construction, including but not limited to: decks, dwellings, porches, garages, buildings, roadways, parking lots, sanitary systems, signs, signboards, satellite dishes, and antennas.

BUILDING. Any structure either temporary or permanent, having a roof and used for or built for the shelter or enclosure of persons, animals, chattels, or property of any kind. This shall not include tents, awnings, vehicles, whether mounted or not on wheels and situated on private property and used for the purpose of a building.