

## **Conflict between (Eveline Twp.) Zoning vs Health Department Code**

This opinion covers the apparent conflict between a grandfathered Zoning Right to Replace a Class B non-conforming use of an RV Travel Trailer vs Health Dept. Code regarding Successor Buildings.

The Wolff property resides in Eveline Township. Eveline Township zoning, and that of most municipalities, allows people to retain the right to live in a manner they are accustomed if that manner was legal when they purchased their property, and if such a lifestyle is not creating any harm to the neighborhood or the environment.

This is exactly the case with the use of an RV travel trailer on the Wolfe/Wolff family property. They purchased their property on Lake Charlevoix in 1967. At that time a trailer existed on their property, and a trailer has been continuously maintained on the property every single year with no exception, ever since. The trailer in place has been replaced twice now, once by Mr. Wolff's parents at some point in the 1980s, and once by Mr. Wolff himself last year in 2021.

Before Mr. Wolff replaced his trailer, he got an informal opinion from the lawyer he worked with, Mr. Mark Hilal that indicated that he was well within his legal rights to do so, since the grandfathered privileges constituted a grandfathered usage, NOT a specific grandfathered structure.

### **Kuhn Rogers Opinion Obtained regarding the legality of trailer replacement**

Shortly after Mr. Wolff replaced his trailer (*with one of similar size*), he became the target of an organized "attack" from various members of his neighborhood who contacted the HOA Board and asked them to initiate legal action against Mr. Wolff. At that time Hal procured a 2<sup>nd</sup> legal opinion regarding his trailer situation. The 2<sup>nd</sup> opinion was formal one from David Glenn, a Kuhn Rogers attorney. This opinion very clearly backed-up the original opinion Mr. Wolff had obtained, which indicated he was well within his legal rights to replace the aging trailer that his parents had bought. **The two key conditions that had to be met to legally replace an RV trailer and maintain a Class B non-conforming usage were:**

- 1) That the trailer be of similar size and class as the one it is replacing, and
- 2) The new trailer be located in the same location on the property as the original one.

**Both of these conditions were met.** (*The entire opinion is included in the appendix.*) So Mr. Wolff felt quite confident that even though his neighbors might not be happy that he chose to continue to live the antiquated lifestyle that he had been accustomed to his entire life based on his parents legacy, he was well within his legal rights to do so.

**Successor Building – Health Department Code conflicts with prevailing Zoning:** the Health Department contends that the replacement of the travel trailer on the Wolff property as described met their requirements of a "Successor Building". This seems rather confusing since Section 2-53 of their code clarifies what would constitute a replacement structure, and it specifies this:

#### **2-53 SUCCESSOR BUILDING**

**Any premises where the square footage is replaced or expanded by greater than 50% through construction, remodeling or renovation activities.**

Since replacing a travel trailer requires no construction, remodeling or renovation, it becomes quite evident that replacing a travel trailer does not constitute a successor building. One might try to make the case that replacing a trailer could in broad terms constitute “renovation”, but that would be a stretch, as the prevailing interpretation defines “the work done to repair or restore something”, and no such work occurs when a trailer is swapped out.

With further examination of the Department’s code, that becomes more evident. Here is section 4-19 which indicates restrictions on Successor Buildings.

#### 4-19 SUCCESSOR BUILDINGS

**A building or mobile home using an existing sewage treatment and disposal system may be replaced or succeeded by a building or mobile home which may use the same treatment and disposal system provided approval of the Health Officer is first obtained and the system is deemed adequate for the replacement building in terms of the provisions of this Code.**

Section 4-19 does broaden the definition of a possible successor building to include mobile homes, but clearly *a mobile home is very different from a travel trailer*. Although they may seem somewhat similar, they are distinctly different in both size and construction, and in particular mobile homes are NOT intended for trips like a trailer is.

**A mobile home can be a single wide or a double wide.** (*Examples of each are shown below.*) The key difference between a mobile home and a travel trailer is that a travel trailer is on wheels, has a working axle and brakes and lights, allowing it to be readily moved from place to place. A mobile home is NOT designed to be moved about in this manner. Regardless if a mobile home is single or double wide, they are “blocked up” on a rudimentary foundation, and moving them would require substantial effort requiring professional assistance for lifting and towing.

**A travel trailer, on the other hand,** can easily be connected to a pick-up truck or SUV and moved. That was the case with the Wolfe trailer that Hal recently replaced. (*Again, see pictures below.*) The only consideration that was necessary were updated tires, and the old trailer was then easily removed with an F-150 pick-up. (And in fact all of the running lights still functioned.)

**Expand, Remodel or Renovate:** another key point of this discussion is that a travel trailer is designed to be easily moved, and considerations for remodeling or renovation are very different from a mobile home. For a travel trailer, an owner will almost never expand, remodel or renovate – you simply replace it. That is exactly what Mr. Wolff did as he had the legal right to do based on prevailing zoning restrictions. The notion that swapping out a travel trailer with one of similar size would fit the requirement of a successor building appears to be an inappropriate categorization. The use of the word “building” highlights an glaring red flag. *Simply put, a travel trailer is not a building, whereas a mobile home is.*

**Very rare:** the presence of a travel trailer in use as a seasonal dwelling is obviously a situation that is very unusual in practice and hence is not considered in the Health Department code provisions, and yet their Environmental Dept. seems determined to categorize the replacement of a travel trailer with a newer one as violation of their code, since code 4-19 requires that any replacement structure or mobile home must receive a Health Dept. inspection and approval of the existing septic system beforehand. This type of oversight does not seem intuitive nor appropriate for a situation such as that with the Wolff property.

### **Health Dept. rational for delineation of “Successor Buildings” for Health Dept. Oversight:**

Further consideration of what the intended Health Department rational for rules 2-53 and 4-19 should be made. **It is presumed that the valid health related rational for any such code, is that by expanding a dwelling, or even by renovating / remodeling such a structure, it could be likely that added bathrooms or bedrooms may be constructed, or new utilities could be added such as a dishwasher or washing machine.** That would make an evaluation of the property’s existing septic system a prudent activity to make sure the capacity of the system will not be exceeded, which could then create a problem that a timely inspection could help prevent.

By contrast, the replacement of a travel trailer with one of effectively identical size creates no such situation of added bathrooms or expanded sleeping capacity, and with no added water using utilities, so this activity would not alter any such considerations, making any Health Department involvement effectively unnecessary. **So long as there is not an increase in overall size of a trailer, meaning there would be no risk for expanded sleeping or bathroom capacity or added utilities, and given that zoning code prevents replacing a trailer with a larger one based on a grandfathered usage, there is no need for Health Department oversight** of such a situation. Again, trying to fit this square peg of Health Dept. code into the round hole of reality is difficult to reconcile.

### **Commentary:**

The most plausible rational that could be reasonably construed for the current stance attempting to categorize a trail trailer swap as a “Successor Building” would be that the Health Department is simply looking for a reason to require an upgrade to an antiquated, non-conforming septic system to get it off the books and replace it with a conforming system. While that rational is understandable coming from an agency whose mission obviously involves a fair amount of enforcement, and there are generally known benefits to enforcing such code, it is not an intended activity of the Health Department to force a significant upgrade to an existing, highly functional but non-compliant septic system when there is no significant change to the landowner’s usage to drive such a consideration. **Without such a usage change involving the likelihood of increased septic burden, there is NO VALID RATIONAL for Health Department involvement at all.**

In this case, it appears that either the Health Department erroneously assumed that there was not a trailer on the property prior to the new one they observed with their first inspection in 2021, or they simply want to find reason to force compliance. Given that it is a clear matter of public record that the Wolfe/Wolff family has maintained a travel trailer on their property continuously since they purchase it in 1967, the only valid rational for Health Department involvement would appear to be largely an organizational reflex action to flex their institutional muscle and force compliance when there is no valid justification to do so.

While code enforcement is clearly a significant priority of the Environmental Department, at some point there needs to be a reckoning and to take a step back and assess what the need for strict enforcement would possibly be. It is difficult to find any valid rational for such a mandate in this situation, other than enforcement for enforcement’s sake, and that would be an unfortunate rational to impart and require a family to make a significant investment in a new septic system when there appears to be no valid reason to require such an investment at this time. That time should occur naturally when further development occurs. Until then status quo (with standard oversight) appears to be the most appropriate outcome.

Hal Wolff  
December 1, 2022

## Appendix

Example of a single wide mobile home



The image below shows a single wide mobile home being transported. A specialized suspension (with 10 wheels) and large truck are required. This is a substantial effort requiring specialized support from various professionals, vs moving a trailer which simply required a pick-up or SUV truck with a trailer hitch.



Example of a double wide mobile home



**Old and new Wolfe/Wolff family RV travel trailers.**

The axel RPOD trailer Hal Wolff installed is pictured below:



The pictures below show the old Coachman Wolfe family trailer that Hal's parents installed:



Old Coachman trailer being removed in August of 2021:





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



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.