

**TOWN OF BELGIUM
ZONING BOARD OF APPEALS MINUTES
JUNE 15, 2023**

Barrie Appeal: Terri Barrie, 6677 Sauk Trail Rd (Parcel No. 01-012-13003.000) appealing the determination by the of the Zoning Administrator regarding residential use of the property not being permitted under Section 3.3, “A-1 Farmland Preservation District,” of the Town of Belgium Zoning Code.

Call to Order: Chairperson Al Weyker called the Board of Appeals Hearing to order at 6:00 pm.

Present: Also present were Board of Appeals members Jim Hubing, John Bowers, Ralph Weber, Gerald Gantner, Janice Poss, Louise Hillegass, Zoning Administrator Charlie Parks, Clerk Anne Nord, Terri Barrie, and Attorney Paul Alexy (via Zoom), and 7 interested persons: Tom Bichler, Sally Schuster, Susan Sherer, Tom O'Donnell, Nancy Opitz, Sherry and Dave Schwabenlender. Quorum was established.

Hearing:

- a. **Presentation by Zoning Administrator:** Mr. Parks informed us that this began with anonymous letter from a concerned resident about uses on the property at 6677 Sauk Trail Road. The resident requested the town check into compliance at the above stated address. The Town requested Roger Kison to do an inspection at the property. Based on what was found, it was found the property was being used as a residence that was being used as a rental. In conjunction, the ZA reached out to Chris Berg from Environmental Health with the Ozaukee County for consultation from the perspective of a rental property. His determination was that it was in violation of health codes, not meeting state standards for vacation rental purposes, as there was no sewer and water on the property. The Health department is waiting on the Town's determination of the hearing prior to their next move regarding the property. It was also determined by the inspection that the property did not meet the requirements of the Town zoning code was also not met for the use of a residence. The structure is 288 sq feet, as seen on the inspector's report, and the town requires a minimum square footage of 1200 sq ft for a primary residence. The owner was sent a letter stating that she was in violation of the Town's ordinance. The property is currently zoned A-1 (it has previously been zoned A-2, but in 2015 it The owner does not agree with the ZA and is appeal his decision at this hearing. ZA also states that she was permitted to upgrade the shed by means of incidental repairs (paint, replace shingles, shutters). In 2010 the town added to the zoning ordinance- it was A-2, and in 2015 after becoming state certified farmland preservation, the property became zoned A-1 due to the soil profile of the soil that underlies the property. In 2010 the Town added an ordinance permitting accessory on a property prior to principal structure as long as the accessory structure is only used for the purpose of property management. That clause was removed in 2023 due to abuses of the shed use.
 - Mr. Weber question: appeal is for 1.) Should this be allowed under 3.1 R-1 residential district? Mr. Parks response: the

structure is 288 sq feet- minimum requirement for home size in R-1 is 1200 sq feet. Structure is not in R-1 district. 2.) The appeal is stating that use should be allowed under 7.1- existing nonconforming use. What is ZA opinion on that? Mr. Parks response: the use of the structure was never a residence, the structure was in place, periodically used for camping. The structure came with the property and being in an A-1 zone, can be used to house equipment to maintain the property. At time of acquisition, it was not used as a primary residence and therefore can't be used as a residence now.

- Mr Alexy response: Reaffirm the fact that this is zoned as part of the A-1 farmland preservation district, therefore residential regulations are not applicable to the property and should have no bearing on the permissible uses. Regarding nonconforming use issues under 7.1, it has to be noted that it has to be a use of land, dwelling or building that existed lawfully before the current zoning ordinance was enacted or amended but that does not conform with the use restrictions in the current ordinance. So it's the lawful use of that building, premises or structure that existed at the time of the zoning ordinance that may not be permitted under the legal nonconforming use provisions (section 62.23 of the Wisconsin statutes or 7.1 of the zoning ordinance). The rights conferred under that statute and ordinance are limited. It's important to keep in mind when looking at legal non-conforming use arguments that the spirit of zoning in WI has been stated by the courts to restrict a non-conforming use and to eliminate such uses as quickly as possible. As a result, the law doesn't tolerate the continuance of a non-conforming use if the use has changed and neither will the law allow continued activity simply because it was taking place on the premises. In summary, legal non-conforming uses are considered to be an anomaly and as a result they are considered to be suspect by the courts. So, while the right to continue a legal non-conforming use is protected, the courts have stated that the burden is on the property owner to prove by a preponderance of the evidence the legal non-conforming use was in existence at the time that the ordinance was passed. They also have to prove that prior to the effective date of the ordinance it was so active that it can be said that they acquired a vested interest in this continuance. So, in that respect, it can't be something that was casual or occasional and if it was merely incidental to some other use of the property than it can't ever acquire that vested interest that was protected. As a result, there are limitations that are established under Wisconsin state law for legal non-conforming use. Although it can be continued, it cannot be extended, neither can alterations to the structure exceed 50% of the assessed value during the lifetime of that legal nonconforming use. Another important consideration that will be applicable in this instance is that even if a legal nonconforming use is found to have existed at the time the ordinance was changed, if it discontinued for a period of 12 months, any future use of either the building or the premises or the structure would have to be in conformity with the ordinance. Under the A-1 farmland

preservation district, there are only 2 uses that are permitted: 1. Farm residence, if the land is used for farming 2. As of January 1, 2014, (section 11) as residence that is in a non-farm status, a single-family residence. Asks Mr. Parks to confirm if property falls under the previously mentioned qualifications (is it a residence on land used for farming or does the structure qualify as a single-family residence?)

- Mr. Parks confirms there is no farming activity on the property and that this was a shed that came with the property when purchased in 2005. It has not been used as, nor would it be allowed to be used as single-family residence by the Town as it falls far below the minimum standards for the square footage of a primary residence. The Town requires 1200 sq ft minimum and the structure at 6677 Sauk Trail is 288 sq ft (referenced by the building inspector's inspection report- exhibit ZA-5). Had the Town Board been approached by the property owner regarding the possibility of converting this structure to a single-family home, the Board would have refused, based on size and falling severely below the required minimum.
- Mr. Weyker asked if to be considered a residential property, is the presence of a well and septic required. Mr. Parks responded that he had just spoken with Ed Pfister, Deputy Director health department (Oz Co) regarding this issue and it is outside of their jurisdiction, but not a requirement in Ozaukee County, nor does the Town require well and septic. Town members are permitted to have a composting toilet and hand pump for "going green", if preferred.
- Mr. Alexy question to Mr. Parks: Was the 1200 square foot ordinance in place as of Jan 1, 2014? Mr. Parks' response: Yes.
- Mr. Alexy: States that Mr. Parks sent a letter to property owner regarding his decision for use of her property and she responded via email on April 7th (Exhibit ZA-1). Mr. Alexy requested exhibit ZA-1 be admitted into the record. He noted that it indicated a timeline with respect to the purchase of the property in 2005 and remodeling taking place 2010, with respect to the status of the property as of 2014, with regard to the notice of appeal, in addition to the legal non-conforming use status, there is a statement in the letter with respect to the status of the property as being a residence of the property owner- in that regard he requests that the board accept into evidence ZA-1 and considers section 6.10 of WI statutes that states that an electors residence is "the place where the persons habitation is fixed without any present intent to move, a place to which when absent, the person intends to return". Asks now to accept into evidence ZA-3 which are the real estate property tax bills, beginning in 2010- 2022. The significance the he requests the Board draw from the documents is where the tax bills were being sent. In no instance was the property owner receiving tax bills at 6677 Sauk Trail Rd. Tax bills have been sent to (multiple) alternate addresses on behalf of the property owner and "nothing speaks to your intent to return to a place better than where you receive your mail." So that establishes that this

property was not her residence. Moving on to exhibit ZA-4, a letter from the Ozaukee/Washington County Health Department indicating that the property is and has been noncompliant in regards to the fact that the residential rental use of the property has been conducted without the required State of Wisconsin licensing to rent this type of facility. The rental use has not been legal, under Wisconsin State law, since the property owner began renting in 2018.

b. Presentation by the Property Owner: Ms. Barrie provides informational packets on the original listing of the property with sales specifications from 2005 as well as an appraisal form from 2005 that states the property was a legal nonconforming site because the land split was prior to 1966 (irrelevant, per Mr. Alexy, due to the outdated nature of the appraisal, reference point being Jan 1, 2014 to date for the legal nonconforming use status). She states that when she purchased the home in 2005- her realtor, Carol Reineke, informed her it was used as and sold as a camp- she was told by the realtor that she could use it as a camp. She states that it was lofted and there was sleeping quarters for 2 people. She states she was also told she could build on the property by her real estate agent. When asked about zoning by Mr. Weyker, she was under the impression that she had already rezoned the property from A-1 to R-1. Mr. Parks confirmed that the property at 6677 Sauk Trail Road is zoned A-1 and has never been zoned R-1. Mr. Schwabenlender clarified that the acre that they sold to Ms. Barrie after she purchased the first with the shed on it, was perk tested for future septic, as her intent was to build at some time. When questioned by Mr. Weyker if she ever approached the town board in regards to what was she was allowed to do and not allowed to do on the property, she states that she trusted that her real estate agent was a professional and that she, herself, did not investigate further with the Town of Belgium regarding permissible uses of the property. The owner was under the impression that she could build but states she did not approach the town in regards to permissible uses of land and assumed her realtors information was accurate. Mr. Alexy interjected here that a realtor's statements/conversations are not legally binding as far as what is permissible with the use of land. The actual use had to be established by Jan 1, 2014, intent is irrelevant.

- The property owner states that in 2012 permit was pulled by Dean Mullikan (contractor). She is unable to provide the permit itself but has referenced a website (assessor data) that indicates that a permit was pulled in 2012. She states that the shed was livable when she purchased it in 2005. She states that she was the sole care provider for her dependent daughter in Milwaukee and she would take respite at the property at 6677 Sauk Trail Rd.
- She states she lived at 6677 Sauk Trail Rd from 2012-2016 (2-5 days a week) Mr. Weyker reminds her that the structure doesn't qualify as a legal residence in the Town of Belgium. 1966 is was 800 sq ft minimum. In 1985 it was changed to the 1200 sq ft minimum.
- Mr. Weyker asked if she ever claimed the legal gaming credit and she reports she did not. He asked her if she knew what

school district her taxes went to and she replied that she assumed they went to Cedar Grove.

- Ms. Poss asked her about when she started renting the property as an AirBNB and she stated she didn't want to discuss renting the property at the meeting.
- Mr. O'Donnell asks, on Ms. Barrie's behalf, if the structure falls under the farmstead act. Mr. Weber explains the purpose of the hearing is to address the property regarding the legal nonconforming use as well as the zoning.
- Mr. Alexy states that despite the fact there may have been a cot and a heater in the structure when she purchased it in 2005, as of Jan 1, 2014 this property didn't qualify for residential use.
- Refocused the discussion Based on the evidence presented this evening, do you find that the zoning administrator's determination that the property was not being lawfully used as a residential property.
- Mr. O'Donnell responded that there was a permit pulled in 2012 and he speculates that this qualifies as her primary residence prior to 2012 and she stayed at the home 2-5 days per week.

c. Testimony of Members of the Public

- Mr. Bichler (Town Supervisor) asked if there were any permits pulled. Mr. Parks response: Owner approached him via phone call asking if improvements could be made. He informed owner that for the purpose of cosmetic, incidental improvements, no permit is required. Verbal approval that as long as the structure of the building doesn't change (siding, painting, new door, shutters, etc.), then a permit is not required for those things. If changing the footprint of the structure or considering interior structural changes, then a permit must be applied for.
- Ms. Sally Schuster: questioning if owner can only put in 50% of value of structure- she could not possibly meet the requirements as she'd have to increase the size of the house by almost 1000 sq feet.
- Ms. Schuster also stated that this hearing is important in order to set a precedent as there is a property owner at 252 Silver Beach who is living in a shed, on an occasional basis. They don't appear to be renting it, but they are using it as a dwelling. This will be noted for the Town Board to address at a later time.
- Ms. Sally Schuster expressed concerns about fire safety and how the lack of running water is a concern. Noted and will be brought up at next plan commission meeting.
 - i. Ms. Barrie responded that she is insured for fire and she keeps a tub of water with a sprayer attachment and a fire extinguisher at the property for fire safety
- Mr. Bichler expressed concern as to no secondary door (safety) as well as about required square footage to allow for handicap accessibility for owner's wheelchair bound daughter and the space for performing transfers, requires 125sq feet for transferring

d. Deliberation

- Mr Weber: series of questions regarding addresses on the tax bills: 2010 was living in an apartment in MKE, rented, 2011: same address, different apartment #, owner was on the lease, 2012: same address, owner still on lease 2013: another apartment different address, she was not on the lease, her mail came to this address , 2014: same, 2015: same, 2016: Pine Tree Kohler: home in Kohler (has been living there since, states that it's her daughter's house and the property owner lives there). Referencing the informational packet the owner provided: asks what was listed under category: vacant land, development status: raw land, remarks: 2 lots being sold together for one perfect building parcel
- Mr. Weber: Most recent use of property, while she's living in Kohler, she rents the property on AirBNB, she estimates, over the past year has property rented 1/3 of nights, and she has only stayed there a few days over the course of the last year.

e. Decision: Mr. Hubing motioned to reaffirm the decision by the Town of Belgium Zoning Administrator concerning the property located at 6677 Sauk Trail Rd (parcel No. 01-121-13.003.00), Mr. Weber amended the motion to include the reasons the decision should be affirmed. First, petitioner's argument that the property should be treated as R-1 zoning is not valid, as it is currently zoned A-1. Second, petitioner did not carry her burden of showing her property was a legal nonconforming use at the relevant date, January 1, 2014. Mr. Gantner seconds the motion.

- Based on the evidence presented this evening, the board finds it necessary to not grant the appeal to Terri Barrie, 6677 Sauk Trail Rd. Motion carried unanimously.
- A written determination will be provided to the petitioner.

4. Motion to adjourn made by Mr. Weber, second by Mr. Gantner. Hearing adjourned at 7:17pm.

Respectfully Submitted,
Anne Nord, Town Clerk