

FILED
06-13-2025
Door County
Clerk of Circuit Court
2024CV000081

DATE SIGNED: June 13, 2025

Electronically signed by Honorable David L. Weber
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT DOOR COUNTY

ADAM WHITE, BRIGID WHITE, and CAPTAIN'S
COTTAGE LLC.

Plaintiffs,

v.

Case No. 24-CV-81

VILLAGE OF SISTER BAY, et al.,

Defendants.

**PROPOSED SUMMARY JUDGMENT ORDER, DECLARATORY JUDGMENT,
AND ORDER ON PETITION FOR WRIT OF CERTIORARI**

Plaintiffs filed this action seeking declaratory and injunctive relief on June 20, 2024. Dkt. 9. Plaintiffs amended their complaint on October 4, 2024, adding a claim for certiorari review from a decision of the Zoning Board of Appeals for the Village of Sister Bay. Dkt. 56. Defendants submitted the certified record on January 3, 2025. The parties then filed cross motions for summary judgment, Dkts. 113, 116, along with multiple briefs and affidavits in support. This Court held a hearing and issued an oral ruling on May 30, 2025, based upon the record and evidence before the Court. The Court's findings of fact, conclusions of law, and reasons for those findings and

conclusions are set forth more fully in the transcript of the Court's oral ruling. Those findings and conclusions include the following:

1. Plaintiffs' driveway, including both the perpendicular portion and the turnaround portion, has been in place, substantially as it is today, since at least 1978.

2. The dimensions of Plaintiffs' driveway meet, and have always met, the length and width requirements found in Village Ordinance § 66.0403(2).

3. Plaintiffs' driveway meets the requirements found in Village Ordinances §§ 66.0403(5) and 66.0403(9).

4. With respect to Village Ordinances §§ 66.0404(5) and 66.0404(6), Plaintiffs are not subject to these provisions in this case because there has been no change in use triggering these provisions.

5. With respect to the requirement in Village Ordinance § 66.0403(10)(d)(1) that properties licensed as a short-term rental must provide 2–4 conforming parking spaces, Plaintiffs' driveway and/or property are grandfathered and exempt from this requirement under Village Ordinances §§ 66.0901, 66.0911, Wis. Stat. § 62.23(7)(h), and the Wisconsin Constitution, as interpreted by the Wisconsin Supreme Court in *Des Jardin v. Town of Greenfield*, 262 Wis. 43 (1952), and subsequent cases.

6. Likewise, with respect to the requirement in Village Ordinance § 66.0403(10)(d)(1) that single family homes must have two spaces per dwelling unit, Plaintiffs' driveway and/or property are grandfathered and exempt from this requirement under Village Ordinances §§ 66.0901, 66.0911, Wis. Stat. § 62.23(7)(h),

and the Wisconsin Constitution, as interpreted by the Wisconsin Supreme Court in *Des Jardin v. Town of Greenfield*, 262 Wis. 43 (1952) and subsequent cases.

7. With respect to the 10-foot side-lot-line-setback requirement found in Village Ordinance § 66.0406(5)(a), Plaintiffs' driveway is grandfathered and exempt from this requirement under Village Ordinances §§ 66.0901, 66.0911, Wis. Stat. § 62.23(7)(h), and the Wisconsin Constitution, as interpreted by the Wisconsin Supreme Court in *Des Jardin v. Town of Greenfield*, 262 Wis. 43 (1952) and subsequent cases.

8. Plaintiffs and their tenants are not grandfathered or exempt from any restrictions on parking cars within the right of way, including, to the extent they apply, Village Ordinances §§ 58.0606(3)(b) and 66.0405(1). During this case, however, Defendants have conceded that their current ordinances do not prohibit parking a vehicle under 12,000 pounds on a driveway within the unused portion of the right of way (off the shoulder of the paved road). The Court notes and accepts that concession but makes no legal conclusions as to the proper interpretation of the Village's ordinances.

Accordingly, IT IS HEREBY ORDERED:

1. On Claims 1–3, Plaintiffs' summary judgment motion is PARTIALLY GRANTED and Defendants' summary judgment motion is PARTIALLY DENIED with respect to Village Ordinances §§ 66.0403(2), (5), (9), (10)(d)(1), 66.0404(5), (6), and 66.0406(5)(a). Plaintiffs' summary judgment motion is PARTIALLY DENIED

and Defendants' summary judgment motion is PARTIALLY GRANTED with respect to Village Ordinances §§ 58.0606(3)(b) and 66.0405(1).

2. With respect to Claims 4–6, Plaintiffs' summary judgment motion is DENIED and Defendants' summary judgment motion is GRANTED, given that, after this Court's temporary injunction order, Dkt. 19, Plaintiffs were provided with the full process to which they were entitled.

The Court HEREBY ISSUES a declaratory judgment as follows:

DECLARATORY JUDGMENT

The Court HEREBY DECLARES that Plaintiffs' driveway and property either meet or are grandfathered and exempt from Village Ordinances §§ 66.0403(2), (5), (9), (10)(d)(1), 66.0404(5), (6), and 66.0406(5)(a). Defendants may not deny Plaintiffs a short-term-rental license on the grounds that their current driveway does not meet these ordinances.

The Court FURTHER DECLARES that Plaintiffs and their tenants are not grandfathered or exempt from any restrictions on where cars can park within the right of way, such as §§ 58.0606(3)(b), 66.0405(1), as they may apply. The Court makes no legal declaration as to the meaning of the Village's current ordinances with respect to parking cars in the right of way. Because these ordinances relate only to where vehicles may park, Defendants may not deny Plaintiffs a short-term-rental license based on these ordinances.

ORDER ON PETITION FOR WRIT OF CERTIORARI

For the same reasons, on Plaintiffs' petition for a writ of certiorari (Claim 7), the Court **HEREBY REVERSES** the Village Zoning Board of Appeals' decision to the extent that it requires Plaintiffs to replace their driveway (or get a variance) as a condition on their short-term-rental license.

THIS IS A FINAL JUDGMENT FOR PURPOSES OF APPEAL UNDER WIS. STAT. § 808.03(1).