BACKROUND

Tom and Julia Willan(Willans) purchased their property in 2011 and live in a single-family home located on a 2.1 acre property located in the Town of Cottage Grove, that DCZ classify as AG-2. DCO 10.126 A-2 AGRICULTURE DISTRICT. (1) Statement of purpose. The purpose of the A-2 Agriculture District is to provide for low density land uses compatible with agricultural and other rural uses and to accommodate agricultural uses on parcels of less than 35 acres. (2) Permitted uses. (a) Agricultural uses. **(b) Single family detached residences.**

The Willan's single family detached 2-bedroom residence was built in 1973. Also, located on the property, are numerous storage sheds and a large detached 75-year-old 2 story barn with separate external entrances getting to from the first floor to the second floor. The Willans house has a 3-car attached garage located on the north end of the house with 4 external entrances into the residence. The Willans decided in February 2017 since they have a large family who come to visit, and that they wanted to move their in-home office out of their basement to put a second story addition over the top of the existing 3-car attached garage. So, in late February Willans went on the town of Cottage Grove website and looked at what they would need to do to proceed.

The Willans had some doubt, so they contacted Tom Viken the Towns building inspector. Willan explained to Mr. Viken what the Willan's plans were and he said that since we were not changing the existing single family residence footprint or use, we would not need a zoning permit from DCZ. Based upon this information, Willan designed the addition per the same plans submitted to DCZ and submitted them to Mr. Viken for approval. On March 6, 2017, the Willans were issued a building permit by the Town of Cottage Grove. On march 7, 2017 the Willans ordered the floor trusses and roof trusses based upon their design. On March 14th the trusses were delivered. On March 20, 2017, the Willans started construction on the Town of Cottage Grove approved addition. On March 24, 2017, DCZ administrator Roger Lane who for the last year has continually harassed and trespassed upon the Willan's property, stopped by the residence and told the Willans they needed a zoning permit. Willan respectfully told Mr. Lane that this was nothing more than continued harassment and a witch hunt to continue to mess with the Willans, he went on to tell them that Mr. Viken told us we did not need a zoning permit, that we had a building permit, and to get off of our property. Willan than immediately scanned a copy of the building permit, typed an email regarding the Willans position on the matter and sent it to Roger Lane.(see attached email and attachments). March 24, 2017 was the last contact Willan ever had with DCZ until the Willans were notified by their attorney Dan Jardine at 9:06 AM on April 13, 2017 about the lawsuit DCZ had filed to stop the Willans from continuing the construction of the addition. On April 13, 2017, at 2:30 PM, a hearing was held on DCZ motion for a TRO and based upon that hearing the Court issued the TRO with an understanding the Willans would get a zoning permit in an express lane 30 minutes to get it done. The Willans emailed the plans and application to DCZ administrator Hans Hilbert and requested that they let the willans know when they can come pick up the permit so they could continue with their addition. DCZ has now denied the permit applications based upon an erroneous assumption that the willans are building a duplex based upon DCZ interpreting. So we have filed this appeal at the recommendation of Roger Lane and Attorney Gault who tells us this is our next due process step.

STANDARD OF REVIEW

DEFINITIONS. For the purposes of this brief certain terms used herein are defined as set forth in this section. Words and phrases not defined in this section or elsewhere in the brief shall be construed by resort to the following, in order of preference: Wisconsin Statutes; Wisconsin zoning case law; other states' zoning case law; the dictionary; and common usage.

Duplex ; In North America, a duplex house is a dwelling having apartments with separate entrances **for two households.** This includes two-story houses having a complete apartment on each floor and also side-by-side apartments on a single lot that share a common wall

Home; The place the Willan's created, dreamed about, designed, remodeled, paid for, and currently resides in, for their safe keeping and wellbeing that is used exclusively for their own personal enjoyment guaranteed by the State of Wisconsin and the United States Constitution.

House; The physical structure of the residence, garage and new addition created as the home the Willan's created, designed, remodeled, resides in, that is used only for the personal enjoyment guaranteed by the State of Wisconsin and the United States Constitution.

Two family dwelling. A building to be designed for the purchase of, or leased by separate families, while being occupied by two families living independently of each other.

State ex rel. Tingley v. Gurda (1932), 209 Wis. 63, 243 N.W. 317, although a mandamus proceeding, recognized that administrative zoning boards were not intended to pass upon legal and constitutional questions relating to the validity of a zoning ordinance, at page 68 it was stated:

". . . It has been held that zoning boards of adjustment are not created as appellate bodies, and that legal or constitutional questions involved in zoning requirements are not a subject matter for the determination of such boards, but must be presented for consideration to the proper legal forum. It seems that, generally, their powers of review are limited to practical difficulties, or unnecessary hardship, in the way of carrying out the strict letter of the law. . . ."

THE NEW ADDITION ON THE WILLAN HOME DOES NOT VIOLATE ANY DCZO AND DCZ ADMINISTRATOR IS ARBITRILY USING AN ERRONEOUS DEFINITION TO DENY THE WILLANS A ZONING PERMIT

By DCZ erroneous definition of the word "Duplex" is violating the Willans constitutional right to enjoy their property. The contemplated extension of the second floor of their house the Willans would not vary or change in any respect the use of both the house and land for anything other than single family residential purposes in fact, and the planned continued single family use render the house more suitable for single-family residential purposes because the addition is, not designed as a duplex according to Wisconsin's uniform building code standards and the Willans would be violating State safety laws will building code violations Nor do the Willans plan, create, extend, enlarge or increase any nonconformity of the house they use exclusively, according to the zoning requirements; neither the front yard nor the side yard "set back" requirements of the ordinance would suffer encroachment by the proposed construction and most importantly is the Willan's personal use will not change.

It is true that when, if ever, the provisions set forth in the ordinance in tedious and minute detail come to be concretely applied to particular premises, including those of the appellee, or to particular conditions, or to be considered in connection with specific complaints, some of them, or even many of them, may be found to be clearly arbitrary and unreasonable.

What the willans request is an extension upward or vertically of the existing garage of the house that conforms in height with the current zoning ordinance and an extension frontward or horizontally of the second floor of the building so that its front line or edge will conform with the garages front line or edge of the existing garage. Only if the Willans **use** of the second-floor addition as a duplex can it be considered a separate dwelling unit of the zoning ordinance which would be considered a nonconforming use. The record fails to disclose any provision of the zoning ordinance which prescribes a personal use for houses in the use district which a vertical or upward extension of the building would violate the single dwelling code. That the willan's proposed reconstruction and use would create a second dwelling unit, is more fanciful than real.

The proposed construction does not violate the zoning ordinance by a vertical or upward extension of the building nor does the extension frontward and horizontally of the second floor violate the front yard "set back" provision of the ordinance. Willan's plans for this legal conforming house neither creates, extends nor increases nonconformity and should be permitted by the zoning authorities. The allowance of this Zoning permit is neither the grant of a "variance" nor an "exception" nor an extension of the use of these premises. It is rather the grant of a logical, reasonable and natural structural change in the building which neither creates any nonconformity of its use nor violates any provision of the zoning ordinance and in no way, affects the general welfare of the neighborhood or of the adjoining property owners.
Because a conforming lot and building have a vested right in continued existence, a purchaser who seeks to use such lot and building for a permitted use cannot be said to be seeking relief from hardship brought upon himself by virtue of his purchase and use. His right to use the lot and building for a permitted use is protected by law. Schultz v. Zoning Board of Appeals, 144 Conn. 332, 130 A.2d 789 (1957). Here, the plaintiffs seek nothing more than to alter the interior of an existing conforming house for a permitted use. In the absence of a finding that the Willans' proposed use of the building would endanger life or property, as set forth in the zoning regulations, there is nothing in the DCZ regulations or the General Statutes to support the County's refusal to issue the zoning permit. The record reveals that no such finding was made either by the building officials Roger Lane or Hans Hilbert.

The zoning ordinance defines a single-family dwelling as a detached building **designed for and occupied exclusively by one family**. The ordinance defines "family" as one or more persons related by blood or marriage occupying the premises and living together as a single house-keeping unit. We must strictly construe this ordinance to favor the free use of property. See Crowley v. Knapp, 94 Wis. 2d 421, 434, 288 N.W.2d 815, 822 (1980). Unless the proposed building is unambiguously something other than a single-family home.... under the county ordinance, the proposed use of the building is not prohibited. See Cohen v. Dane County Board, 74 Wis. 2d 87, 92, 246 N.W. 2d 112, 114 (1976).

A. Vagueness

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply themA vague law impermissibly delegates

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basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the exercise of [those] freedoms." Uncertain meanings inevitably lead citizens to "steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked."

The constitutional grounds of attack, among others, are that the statutory provisions, if enforced, will deprive plaintiff, its officers, agents and representatives, of their liberty and property without due process of law, in violation of the Fourteenth Amendment to the federal Constitution; that they contain no ascertainable standard of guilt; that it cannot be determined with any degree of certainty what sum constitutes a current wage in any locality; and that the term "locality" itself is fatally vague and uncertain. The bill is a long one, and, without further review, it is enough to say that, if the constitutional attack upon the statute be sustained, the averments justify the equitable relief prayed.

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That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law, and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. International Harvester Co. v. Kentucky, 234 U. S. 216, 234 U. S. 221; Collins v. Kentucky, 234 U. S. 634, 234 U. S. 638.

The question whether given legislative enactments have been thus wanting in certainty has frequently been before this court. In some of the cases, the statutes involved were upheld; in others, declared invalid. The precise point of differentiation in some instances is not easy of statement, but it will be enough for present purposes to say generally that the decisions of the court upholding statutes as sufficiently certain rested upon the conclusion that they employed words or phrases having a technical or other special meaning, well enough known to enable those within their reach to correctly apply them, Hygrade Provision Co. v. Sherman, 266 U. S. 497, 266 U. S. 502; Omaechevarria v. Idaho, 246 U. S. 343, 246 U. S. 348, or a well settled common law meaning, notwithstanding an element of degree in the definition as to which estimates might differ, Nash v. United States, 229 U. S. 373, 229 U. S. 376; International Harvester Co. v. Kentucky, supra, at 234 U. S. 223, or, as broadly stated by Mr. Chief Justice White in United States v. Cohen Grocery Co., 255 U. S. 81, 255 U. S. 92,

"that, for reasons found to

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result either from the text of the statutes involved or the subjects with which they dealt, a standard of some sort was afforded."

Among the cases cited in support of that conclusion is United States v. Capital Traction Co., 34 App.D.C. 592, where a statute making it an offense for any street railway company to run an insufficient number of cars to accommodate passengers "without crowding" was held to be void for uncertainty. In the course of its opinion, that court said (pp. 596, 598):

"The DCZ ordinance definition of "Duplex" makes it a civil offense for putting an addition on your primary use single family occupied home even if you are going to use it as a (a) Single family dwelling. A which is a building designed for and occupied exclusively as a residence for one (1) family, the Willans. What shall be the

guide to the court or jury in ascertaining what constitutes a (a) Single family dwelling. A building designed for and occupied exclusively as a residence for one (1) family when DCZ call it a duplex? What may be regarded as a single-family home by one jury may not be so considered by another. What shall constitute a specific design labeling it a duplex of the addition in the opinion of one judge may be regarded as insufficient by another. . . . There is a total absence of any definition of what shall constitute a design of a duplex. This important element cannot be left to conjecture, or be supplied by either the court or the jury. It is of the very essence of the law itself, and without it the statute is too indefinite and uncertain to support an information or indictment. "

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". . . The dividing line between what is lawful and unlawful cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another."

In the light of these principles and decisions, then, we come to the consideration of the legislation now under review, allowing a subjective zoning administrator, with no legal guidance prescribed by 59.69(8) to put the Willans at risk of incurring more severe and cumulative penalties, because they obtained a building permit from the Town of Cottage Grove," invested 20,000 already in real costs, to be denied a zoning permit based upon a vague definition.."

We are of opinion that this provision presents a double uncertainty, fatal to its validity as a zoning ordinance. In the first place, the words "design" does not denote any specific standards or definite design but a minimum, maximum, and intermediate amounts of families, who indeterminately, varying what type of dwelling dependent a DCZ making an arbitrary determination based upon a design, with no standards under construction. * The statutory phrase reasonably cannot be confined to any of these amounts, since it imports each and all of them. The "current usage of the addition for the willans" is simple, not progressive – They are so much (the minimum) not so much (the maximum), including all between; and to direct a prohibition which shall not be less than one but several different amounts, without saying which specific design, is to leave the question of what is meant incapable of any definite answer. See People ex rel. Rodgers v. Coler, 166 N.Y. 1, 24-25.

First, the willans have attacked the good faith of the DCZ in enforcing the statutes, claiming that they have invoked, and threaten to continue to invoke, ordinance violations as a process without any hope of ultimate success, but only to discourage Willan's civil rights activities. If these allegations state a claim under the Civil Rights Act, 42 U.S.C. § 1983, as we believe they do, see Beauregard v. Wingard, 230 F.Supp. 167 (D.C.S.D.Calif.1964); Bargainer v. Michal, 233 F.Supp. 270 (D.C.N.D.Ohio 1964), the interpretation ultimately put on the statutes by the state courts is irrelevant. For an interpretation rendering the statute inapplicable to DCZ would merely mean that Willans might ultimately prevail in the state courts. It would not alter the impropriety of DCZ invoking the statute in bad faith to impose continuing harassment in order to discourage Willans' property activities, as DCZ allegedly are doing and plan to continue to do.

Second, Willans have challenged the statutes as overly broad and vague regulations of Police powers under 59.69. We have already seen that where, as here, prosecutions are actually threatened, this challenge, if not clearly frivolous, will establish the threat of irreparable injury required by traditional doctrines of equity. We believe that, in this case, the same reasons preclude denial of equitable relief pending an acceptable narrowing construction. The area of proscribed conduct will be adequately defined and the deterrent effect of the statute contained within constitutional limits only by authoritative constructions sufficiently illuminating the

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contours of an otherwise vague prohibition. As we observed in Baggett v. Bullitt, supra, at 377 U. S. 378, this cannot be satisfactorily done through a series of criminal prosecutions, dealing as they inevitably must with only a narrow portion of the prohibition at any one time, and not contributing materially to articulation of the statutory standard. We believe that those affected by a statute are entitled to be free of the burdens of defending prosecutions, however expeditious, aimed at hammering out the structure of the County piecemeal, with no likelihood of obviating similar uncertainty for others. Here, no readily apparent construction suggests itself as a vehicle for rehabilitating the ordinance in a single prosecution, and appellants are entitled to an injunction. The State must, if it is to invoke the statutes after injunctive relief has been sought, assume the burden of obtaining a permissible narrow construction in a noncriminal proceeding before it may seek modification of the injunction to permit future prosecutions.

On this view of the "vagueness" doctrine, it is readily apparent that abstention serves no legitimate purpose where a statute regulating the Willans property rights is properly attacked on its face, and where, as here, the conduct charged in the Brief is not within the reach of an acceptable limiting construction readily to be anticipated as the result of a single zoning prosecution and is not the sort of "hard-core" conduct that would obviously be prohibited under any construction.

In these circumstances, to abstain is to subject those affected to the uncertainties and vagaries of zoning prosecution, whereas the reasons for the vagueness doctrine in the area of expression demand no less than freedom from prosecution prior to a construction adequate to save the statute.

In such cases, abstention is at war with the purposes of the vagueness doctrine, which demands appropriate judicial relief regardless of the prospects for expeditious determination of state civil prosecutions.

We conclude that on the allegations of the complaint, if true, abstention and the denial of injunctive relief may well result in the denial of any effective safeguards against the loss of protected freedoms of property rights, and cannot be justified.

Just like in Harding's proposed use, and Cohen's proposed use, along with the Willans proposed use, they all fall within the definition of a current permitted Dane County use. The Willan's home is both designed for and will be exclusively occupied by only the Willan family. "Design" means "to . . . have . . . as a purpose" and "to draw a . . . sketch . . . ." Webster's Third New International Dictionary 611 (1976). The addition's purpose is to provide extra office and living space for only the Willan family to use. The proposed building's floor plan has a proposed Dairy kitchen for canning in the fall, an open room, a bathroom, and a potential office to be used exclusively by Tom and Julia Willan married family members. The Willan home is exclusively designed to be occupied by only the Willan family. Although a different family member may occasionally occupy a portion of the home during a visit, that one family member would not occupy the home as a permanent resident of any separate dwelling to the exclusion of the willans permanent single family home use. The ordinance fails to expressly require two family occupancy over a period of time before it would constitute it a DCZO defined duplex, and we cannot impose such a requirement. We conclude that the ordinance does not prohibit the Willan's proposed use.

The Ordinance definition of a "duplex" adopted by DCZ extend to "a building designed to be occupied by two families living independently of each other". The ordinance does not declare building designed to be a "duplex" or punishable as such. Under it, no building is a duplex unless designed to be occupied by two families living independently of each other. It cannot be said that the DCO intended to give "Duplex" a meaning broad enough to include anyone who had not designed their building be occupied by two families living independently of each other". The latter interpretation would include some obviously not within the statute, and would exclude some plainly covered by it.

"It is readily apparent that, under the DCZ scheme, the 'designed to be occupied use' phrase refers to the physical characteristics of a dwelling deemed per se fashioned for use occupied by two families living independently of each other; and that, if any intentional conduct is implicated by the design, it is not the intent of the 'designer' whose intent in this case was to design the addition as a building designed for and occupied exclusively as a residence for one (1) family, the willans.

The challenged provision condemns no act or omission; the terms it employs to indicate what it purports to denounce are so vague, indefinite and uncertain that it must be condemned as repugnant to the due process clause of the Fourteenth Amendment.

The dictionary definitions adopted by the state court extend to persons acting together for some purpose, "usually criminal," or "mainly for criminal purposes." So defined, the purposes of those constituting some gangs may be commendable, as, for example, groups of workers engaged under leadership in any lawful undertaking. The statute does not declare every member to be a "gangster" or punishable as such. Under it, no member is a gangster or offender unless convicted of being a disorderly person or of crime as specified. It cannot be said that the court intended to give "gangster" a meaning broad enough to include anyone who had not been so convicted or to limit its meaning to the field covered by the words that it found in a dictionary, "roughs, hireling criminals, thieves, or the like." The latter interpretation would include some obviously not within the statute, and would exclude some plainly covered by it.

The enactment employs the expression, "Designed to be occupied." It is ambiguous. There immediately arises the doubt whether actual or putative association is meant. If actual occupation is required, that status must be established as a fact, and the word "designed" would be without significance. If Designed to be occupied is enough, there is uncertainty whether that occupancy must be general or extend only to some persons. And the statute fails to indicate what constitutes occupied, or how one may design."

The challenged provision condemns no act or omission; the terms it employs to indicate what it purports to denounce are so vague, indefinite and uncertain that it must be condemned as repugnant to the due process clause of the Fourteenth Amendment.

While the Courts have affirmed the strict construction of terms in a zoning ordinance as stated in La Sallette. 10.01 (79) **Use, permitted**. A permitted use is a use which may be lawfully established in a particular district or districts, provided it conforms with all requirements and regulations of such district in which such **use** is located. (80) **Use, principal**. A principal use is the main use of land or buildings as distinguished from a subordinate or accessory use. The Willan's use is both permitted and principal which is consistent with the zoning ordinance as a whole. It thus appears that the DCZO definition of "Duplex" is ambiguous. As we have stated above, an ambiguous term in a zoning ordinance must be construed in favor of the free use of private property, and unless this court can be satisfied that the use that the property has been put to by the Willans, is unambiguously a "Duplex," it is not a prohibited use. No more than the courts Thus, concluded in DC v Cohen, as a matter of law that a place where empty trucks are parked does not constitutes a "truck terminal" as that term appears in C-2 of the zoning ordinances. The court rejected DCZ argument based upon a matter of law! Accordingly, where the intent and meaning of the terms embraced in a zoning ordinance are clear, the power of the zoning authority to control and use for the purpose of promoting public health, safety, and general welfare is to be broadly construed. We are, however, not concerned in the instant case with the power of the county to prohibit duplexes in designated land use districts. Clearly, the county has that power. The question posed is whether the term, "Duplex," embraces as a matter of law the continued use being made of their home and land by the Willans. In this case, as a matter of law, their arguments do not!

DANE COUNTY ZONING ORDINANCES ARE UNCONSTITUTIONAL BECAUSE THEY DO DEFINE EQUAL PROTECTION STANDARDS FOR THE ZONING ADMINISTRATOR TO ISSUE PERMITS

Currently under DCO chapter 10 there are no legal standards listed for equal, fair and nonprejudicial evaluation of a zoning permit application by the zoning administrator. DCZ has basically required everyone who is under their jurisdiction to get a zoning permit for just about anything they propose to do, yet the ordinance lacks any defined standards by ordinance for the zoning administrator to use in examining a zoning permit application.
"PREPONDERANCE OF THE EVIDENCE STANDARD"

The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of fact finding, is to "instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." In re Winship, 397 U. S. 358, 370 (1970) (Harlan, J., concurring). The standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision.

Generally speaking, the evolution of this area of the law has produced across a continuum three standards or levels of proof for different types of cases. At one end of the spectrum is the typical civil case involving a monetary dispute between private parties. Since society has a minimal concern with the outcome of such private suits, plaintiff's burden of proof is a mere preponderance of the evidence. The litigants thus share the risk of error in roughly equal fashion.

In this case the litigants do not share the risk of error in roughly equal fashion at all because if DCZ is denied by the court in error they don't lose anything, they are still at square one with all the resources of government to continue to terrorize the willans, and the right to continue to use ambiguous laws to continue to file a new Claim, If the Zoning permit is not granted in error the respondent loses his right to a liberty interest protected by the Fifth and Fourteenth Amendments includes the right to establish a home and bring up children. Board of Regents v. Roth, 408 U.S. 564, 572, 92 S.Ct. 2701, 2706, 33 L.Ed.2d 548 (1972). Blazel v. Bradley, 698 F. Supp. 756 (1988). A mere preponderance of the evidence theory is inappropriate due process under DCZ ordinance because of the unequal risk of error and the penal consequence attached.

DCZ power is derived by Wis stat 59.69 (4) Extent of power. For the purpose of promoting the public health, safety and general welfare the board may by ordinance effective within the areas within such county outside the limits of incorporated villages and cities establish districts of such number, shape and area, and adopt such regulations for each such district as the board considers best suited to carry out the purposes of this section. The board may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form. The board may not enact a development moratorium, as defined in s. 66.1002 (1) (b), under this section or s. 59.03, by acting under ch. 236, or by acting under any other law, except that this prohibition does not limit any authority of the board to impose a moratorium that is not a development moratorium.
The powers granted by this section **shall be exercised through an ordinance** which may, subject to sub. (4e), determine, establish, regulate and restrict: If the powers granted by this section shall be exercised by ordinance subject to (4e), determine, establish, regulate, and restrict, how can DCZ not have any standards by ordinance that tells both the zoning administrator and the permit applicant the legal criteria for the issuance of the permit? DCO 10.25 is the only ordinance the applicant has found, that. even attempts at a logical set of standards that only provides standards for the permit applicant applying for a permit and not for the zoning administrator to use as a guide to issue a permit. Under DCO 10.26 there are standards for the board of adjustment to follow for an aggrieved permit applicant but nothing for a Zoning administrator to follow for issuance of a permit. This is Unconstitutional! The court holding the opinion that "there may be a case in which an ordinance, passed under

grants of power like those we have cited, is so clearly unreasonable, so arbitrary, oppressive, or partial, as to raise the presumption that the legislature never intended to confer the power to pass it, and to justify the courts in interfering and setting it aside as a plain abuse of authority,"

In this case it proceeds to speak, with regard to the ordinance in question, in relation to the use of a Dwelling., as follows:

"It does not profess to prescribe regulations for their construction, location, or use, nor require such precautions and safeguards to be provided by those who own and use them as are best calculated to render them less dangerous to life and property, nor does it restrain their use in residential zoning districts and other similar zoning districts within certain defined limits, nor in any other way attempt to promote their safety and security without destroying their usefulness.
But it commits to the unrestrained will of a single public officer the power to issue every person who now need a zoning permit in the remodeling of any single family dwelling in the county of Dane to cease to do so, and, by providing compulsory fines for every day's disobedience of such notice and order of removal, renders his power over the use of a dwelling in that county of Dane practically absolute, so that he may prohibit its use altogether. But if he should not choose to do this, but only to act in particular cases, there is nothing in the ordinance to guide or control his action.
It lays down no rules by which its impartial execution can be secured or partiality and oppression prevented. It is clear that giving and enforcing zoning permits may, and quite likely will, bring ruin to the property owner of those against whom they are directed, while others, from whom they are not withheld, may be actually benefited by what is thus done to their neighbors; and, when we remember that this action or nonaction may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism and other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or to comment upon the injustice capable of being brought under cover of such a power, for that becomes apparent to everyone who gives to the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

This conclusion, and the reasoning on which it is based, are deductions from the face of the ordinance, as to its necessary tendency and ultimate actual operation. In the present cases, we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons(the Willans a legal class of one) as to warrant and require the conclusion that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the Willans, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal

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hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this court in Henderson v. Mayor of New York, 92 U. S. 259; Chy Lung v. Freeman, 92 U. S. 275; Ex parte Virginia, 100 U. S. 339; Neal v. Delaware, 103 U. S. 370, and SSoon Hing v. Crowley, 113 U. S. 703.

The DCZ administrator also noted its concern that the addition may be put to illegal use at some point in the future. This speculative concern, without any additional supporting evidence, is insufficient grounds for denying Willan's zoning permit application, especially given their willingness to agree to restrictions on such use. Finally, the DCZ found that the applicant failed to show how the negative criteria was met, and further found that granting the variance would have a negative impact on the zone plan. These statements are conclusory and do not satisfy the Board's obligation to make specific findings. The present cases, as shown by the facts disclosed in the record, are within this class. It appears that the Willans have complied with every requisite deemed by the law or by the public officers charged with its administration necessary for the protection of neighboring property from fire or as a precaution against injury to the public health. No reason whatever, except the will of the Roger Lane, is assigned why they should not be permitted to carry on, in the accustomed manner, their harmless and useful use of their home, on which they depend for a safe secure place to live. And while this consent of the Roger Lane is withheld from them, others, not the Willans, are permitted to carry on the same residential use under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted that no reason for it exists except hostility to the Willans to which the petitioners belong, and which, in the eye of the law, is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution. The imprisonment of the petitioners is, therefore, illegal, and they must be discharged. To this end,

10.25 ADMINISTRATION, ENFORCEMENT
AND PENALTIES. (1) Zoning administrator. (a) The provisions of this ordinance shall be administered by or under the zoning administrator, who in person or by duly authorized deputy or assistant shall have the 10.21(4) – 10.25(1)(a) right to enter upon premises affected by this ordinance at reasonable hours for the purpose of inspection. The zoning administrator shall hold his or her office under civil service, and vacancies in such office shall be filled by procedures established by civil service ordinance. The county executive shall be the appointing authority for the position of zoning administrator. (b) **It shall be the duty of the zoning administrator to receive applications for zoning permits and such other permits and licenses provided in this ordinance, and to issue such permits after applications have been examined and approved;** to inspect buildings under construction for compliance with the regulations of this ordinance; to make periodic inspections; to take such action as may be necessary for the enforcement of the regulations provided herein; to attend all meetings of the zoning committee and the board of adjustment; and to perform such other duties as the zoning committee and the board of adjustment may direct. (2) Zoning permits. (a) No new building shall hereafter be erected, and no existing building shall be added to, structurally altered, moved or changed in use, nor shall any nonconforming building be repaired or restored, in any district, until a zoning permit has been issued, except as otherwise provided by law or ordinance. (c) An applicant for a zoning permit shall file a development plan as defined in s. 10.01(19n). If from the development plan submitted by the applicant or based upon information gathered by a zoning inspector, the zoning administrator cannot determine compliance with the provisions of county ordinances, the zoning administrator may require the filing of a development plan prepared by a licensed surveyor. The zoning
administrator may also require evidence of compliance with the Dane County Sanitary Code, the Dane County Land Division and Subdivision Ordinance, Dane County Trunk Highway Access Control Regulations or any other state or township access or culvert permit requirements as a condition precedent to the issuance of a zoning permit. The zoning administrator shall not be responsible for determining the location of lot lines.
(d) Application for a permit must contain the following: name and address of the owner of the property, legal description, size and location of the building to be erected or moved on or onto the property, proposed use of the building or premises, type of construction, estimated cost and any other information as the zoning administrator may require. (e) This application shall be signed by the owner or his or her duly authorized representative or agent; provided, however, that, if a prospective owner desires a prior ruling on a proposed construction or use before consummation of purchase, he or she may apply for a permit, and, if a permit be denied, he or she may appeal to the board of adjustment.

There is nothing under current DCO which is required by Wis stat 59.69 (4) Extent of power, where there is a current DC ordinance, that even attempts a showing of due process standards that a zoning administrator has to follow to either grant or deny a permit! The courts below say this is unconstitutional and we agree. Without zoning standards by ordinance, for the permit applicant, this is essentially unconstitutional state sponsored, unprotected sex that DCZ is having with the permit applicant in this case regarding the process. For those reasons, it is unconstitutional.

We find that the weight of authority holds that where a zoning ordinance attempts to permit municipal officials to grant or refuse permits without the guidance of any standards, equal protection is denied the citizens. "* * * Where a zoning ordinance permits officials to grant or refuse permits without the guidance of any standard, but according to their own ideas, it does not afford equal protection. It does not attempt to treat all persons or property alike as required by the Zoning Act. While the exercise of discretion and judgment is to a certain extent necessary for the proper administration of zoning ordinances, this is so only where some standard or basis is fixed by ordinance which such discretion and judgment may be exercised by the board. Where a zoning ordinance is vague and indefinite, it cannot be sustained as valid under the authorizing act." Taylor v. Moore, 303 Pa. 469, 154 A. 799 (1931).

In Osius v. City of St. Clair Shores, 344 Mich. 693, 75 N.W.2d 25, 58 A.L.R.2d 1079 (1956), the plaintiff was denied a permit to construct a service station in a zone where such businesses were permitted. The ordinance gave the zoning board of appeals original jurisdiction to grant or refuse such applications but contained no standards for the guidance of the board. The Court found those provisions of the ordinance to be unconstitutional, saying:
"The ordinance presented is fatally defective. The zoning board of appeals is simply given authority to permit, and obviously to refuse to permit, the erection of gasoline stations after public hearings. But what standards prescribe the grant or rejection of the permission? We find none. The ordinance is silent as to size, capacity, traffic control, number of curb cuts, location, or any other of the myriad considerations applicable to such business."
In North Bay Village v. Blackwell, Fla., 88 So. 2d 524 (1956) the ordinance in question permitted filling stations in the reference zone "subject to approval of location and site by action of Council." The city council denied the defendants a permit. The court ruled that the failure of the ordinance to prescribe definite standards for the guidance and control of the permit issuing officers invalidated that part of the municipal enactment. See also Homrich v. Storrs, 372 Mich. 532, 127 N.W.2d 329 (1964).

The view that the legislative authority cannot delegate to itself or to another municipal board an unfettered discretion to issue or not issue permits appears to be accepted by the text writers who have been concerned with the subject. See Yokley on Zoning Law & Practice, Vol. 1, Section 62; 9 McQuillin, Municipal Corporations, Section 26.114, page 267, 3 Antieau, Municipal Corporation Law, Section 24.08, page 377.

In the instant case the ordinance provides no standards to limit and guide the Zoning administrator in the exercise of its permit-issuing power.

It may be argued that sufficient standards to govern the Zoning administrator actions are found in the language of Section 10 which required the Board to exercise its power "in harmony with the comprehensive plan for municipal development and the purpose and intent of this ordinance, in accordance with the public interest and in support and furtherance of the health, safety and general welfare of the residents of the municipality." Neither this language nor the language of Section 10 ("The regulations of this ordinance shall be held to be the minimum requirements for the promotion of the health, safety and general welfare * * *") established sufficient standards to meet the constitutional requirement of standards.

In Osius, the court found that similar broad statements as to purposes of the ordinance as to public health, safety and general welfare furnished no adequate guidelines for the Zoning administrator's action.

A further basis for our conclusion that the grant of unlimited discretion to the Board exceeded the City's authority is found in the fact that the state enabling legislation requires that "[a] zoning ordinance shall be drafted as an integral part of a comprehensive plan for municipal development, * * *" 30 M.R.S.A. Sec. 4953(2). By requiring that zoning be in accordance with a comprehensive plan, the legislature clearly attempted to avoid ad hoc, unplanned, and potentially arbitrary zoning. The City's ordinance which gives the Board unbridled discretion to approve or disapprove all major changes in Commercial C was not zoning in accordance with a comprehensive plan but rather was a device to permit, in effect, lot-by-lot zoning.

For the reasons stated we conclude that the zoning ordinance of the City of Waterville is unconstitutional and void in so far as it attempts to delegate to the Board of Zoning Appeals authority to approve or reject applications for permit in the Commercial C zone without adequate standards for the Board's guidance Waterville Hotel Corp. v. Board of Zoning Appeals :: 1968 :: Maine ...
The Willans declare Section 10 unconstitutional and void in so far as it attempts to delegate to the Zoning Administrator authority to approve or reject applications for permit in the Zoning office without adequate standards for the Zoning administrator's guidance to provide equal protection to the willans against the arbitrary open door to favoritism and discrimination it is constitutionally required to protect.

OTHER ZONING CASELAW TO CONSIDER

A Motion by Willan to compel DCZ to issue to Willan a zoning permit was filed. Petitioner has erected a $20,000 second story addition onto their existing 2-bedroom residence in a zoning district area, restricted to one family residences in the Town of Cottage Grove. The Willans applied for a zoning permit which DCZ has denied because DCZ erroneously holds that the residence as constructed is a two-family dwelling. The Town of Cottage Grove had issued a building permit to Willan on March 8, 2017, to erect this particular addition. Willan made no changes as the building was being constructed, one of which (the main objection of DCZ) was, **"Since the sole access to the addition is external and not common to the existing portion of the single-family residence, and because this space has a bathroom, kitchen, and what appears to be a bedroom this has the appearance of resulting in a duplex use. A duplex is defined as a building designed to be occupied by two families living independently of each other. I'm not saying that you intend to use this as a duplex, but the fact that the design would allow for it is my concern."** (Hans Hilberg's reasoning from April 14, 2017))
A zoning permit was refused by DCZ (March 14, 2017) because of the presence of the appearance of resulting in a duplex use. The owner, on March 14, 2017, filed a motion for mandamus to the Circuit court of Dane County Branch 9, the Honorable Richard Niess presiding, compelling DCZ administrator to issue a zoning permit.

It would appear that the only proof before DCZ when considering this application was the plans submitted and an email statements from Willan that his intended use was for personal use, that no other family would be living on the premises. The formal letter was sent on March 17, 2017, which states, "Given that the current zoning of the property is in the A-2 Agriculture Zoning District, which only permits single family dwellings, and the proposed construction is designed to be a separate dwelling unit, the application for the second story addition is hereby DENIED.
That would seem to be a conclusion drawn by DCZ from the plans and from what someone may have told DCZ. Examining the elaborate plans for this elaborate dwelling, I cannot find any evidence to support that conclusion. No other reasons are given in the denial letter to account for DCZ denial of Willan's zoning permit application. It would seem that the denial was not based upon proof of any kind.

The accepted definition of a two-family house may be found in the Multiple Dwelling Law where it provides that, "A building designed for and occupied exclusively by two families is a `two-family private dwelling'" (emphasis supplied; § 4, subd. 6), and a "`single-family private dwelling'" is a building "designed and occupied exclusively by one family" (§ 4, subd. 6). DCO definition is 10.01 (a) Single family dwelling. A building designed for and occupied exclusively as a residence for one (1) family.
(c) Duplex family dwelling. A building designed to be occupied by two families living independently of each other.

As might be expected, neither the design of the house nor the nature of its occupancy standing alone controls. The combination of the design of the house and the nature of the occupancy is the twofold test. The word "design" in the definition need not be commented upon. In saying that, I am not unmindful of the fact that DCZ leans heavily, I would say entirely, upon design for its objection to Willans addition. I consider that comment on the word "family" will more than suffice. Taking DCZ's objection at face value, it considers that the design, including two kitchens and other possible uses for rooms labeled in plans to the contrary, render petitioner's dwelling into one being used as a two-family house. What does "family" mean in that last expression? Our "family" is derived from the Latin familia. Originally the word meant servant or slave. Now its accepted definition is "a collective body of persons living together in one house, under the same management and head, subsisting in common, and directing their attention to a common object, the promotion of their mutual interests and social happiness." Then again, "as used in statutes of descent, the word is usually construed to mean those who have the blood of the ancestor." Another, "All those persons who constitute the members of the same household." (See Ballentine's Law Dictionary, p. 488). "Household" means "Persons who dwell together as a family." (P. 597.)

No local ordinance defining the words "one family house" or "two family house" has been called to my attention. No meaning may be ascribed to accepted legal terms except the legal definitions of those terms. It would seem that as far as occupancy goes, to classify premises as a two-family house there would have to be two separate families not living together as a unit. The using of a dwelling for living purposes by a husband and wife, (although no mention is made of Willan's family), in the absence of evidence to the contrary, may not be said to be the setting up of two separate family units who are living not under a single head or management for the purpose of denying a zoning permit in a one-family district.

There is no provision in DCZ Building Zone Ordinance stating when and under what conditions a zoning permit should be issued. The only reference to the subject is section DCO 10.25 enforcement. It seems that Willan has established a clear legal right to the zoning permit for which he applied. Stafford v. Incorporated Village of Sands Point, 200 Misc. 57, 102 N.Y.S.2d 910 (1951).
The ordinance contains no standards to distinguish buildings "designed * * * for one family" from buildings "designed * * * for more two families." Moreover, the definitions of a one-family dwelling and a multiple dwelling are facially inconsistent since, reading the ordinance literally, a dwelling occupied by one family, but designed for two families, would be encompassed by both definitions.

Wis. Stat. 101.60 Purpose. The purpose of this subchapter is to establish statewide construction standards and inspection procedures for one- and 2-family dwellings and to promote interstate uniformity in construction standards by authorizing the department to enter into reciprocal agreements with other states which have equivalent standards.

Chapter SPS 321
CONSTRUCTION STANDARDS

SPS 321.01 Scope. The provisions of this chapter shall apply to the design and construction of all one– and 2–family dwellings. History: Cr. Register, November, 1979, No. 287, eff. 6–1–80.

2) DWELLING UNIT SEPARATION. (a) General. In 2–family dwellings, dwelling units shall be separated from each other and from shared tenant spaces including attics, basements, garages, vestibules and corridors. (b) Attic separation. Dwelling units with attic space that extends over both units shall be separated in accordance with one of the following: 1. 'Complete separation.' The units shall be provided with wall construction under par. (d) that extends all the way to the underside of the roof deck. 2. 'Vertical and horizontal separation.' a. The units shall be provided with wall construction under par. (d) that extends to the dwelling unit ceiling and ceiling construction under par. (e). b. Dwelling units using this method of separation shall provide attic draft stopping under par. (f) that extends all the way to the underside of the roof deck above and in line with the separation wall.
SPS 321.03 Exits. Exits, doors and hallways shall be constructed as specified in this section. (1) EXITS FROM THE FIRST FLOOR. (a) Except as allowed under par. (h), every dwelling unit shall be provided with at least 2 exit doors accessible from the first floor.

7) DOORS USED FOR EXITING. (a) Doors used for exiting from a dwelling shall meet the following dimensions:
1. At least one exit door shall be a swing–type door at least 80 inches high by 36 inches wide. 2. Except as allowed under subds. 3. and 4., other required exit doors shall be at least 76 inches high by 32 inches wide. 3. Where double doors are used as a required exit, each door leaf shall provide a clear opening at least 30 inches wide and be at least 76 inches high. 4. Where sliding doors are used as a required exit, the clear opening shall be at least 29 inches wide and be at least 76 inches high. (b) All exit doors shall be openable from the interior without the use of a key.
(10) TWO–FAMILY DWELLINGS. In a 2–family dwelling, each dwelling unit shall be provided with exits in compliance with this section.

None of these Wisconsin building standards were used by DCZ to analyze the design of the Willans addition to see if it was designed for a two family dwelling. It is obvious in the design or construction of the Willans addition that the addition has, was and is only designed for the willan family personal use because the willans did not intend to build a duplex.

On this record, it would be appropriate to resolve the contention that the DCZ ordinance, as applied, is impermissibly vague and violates appellants' due process rights.

What is evident from this record is that an addition that was concededly designed for occupancy by the Willan family and no one else was determined by DCZ to have been designed, at least potentially, for more than one family. The dilemma that confronts the Willan family in this case is one that confronts many families as life-expectancies increase and housing costs escalate. A common response will be the construction of an addition to the existing dwelling in order to accommodate the enjoyment of the family. To the extent that zoning ordinances determine whether or not such additions may be constructed, such ordinances must provide clear standards to guide both applicants and local officials in ascertaining the extent to which a single-family dwelling may be altered to provide independent facilities for a family member without converting it into a multiple dwelling. See Town of Kearny v. Modern Transp. Co., 116 N.J. Super. 526, 529 (App.Div. 1971) (zoning ordinances "should be clearly and expressly imposed and should not be left to inference," especially where a citizen seeks in good faith to utilize his property) (quoting Maplewood v. Tannenhaus, 64 N.J. Super. 80, 89 (App.Div. 1960), certif. denied, 34 N.J. 325 (1961)); accord State v. Lashinsky, 81 N.J. 1, 18 (1979) (an ordinance's language must enable a person of "common intelligence, in light of ordinary experience" to be apprised that his conduct is unlawful).

Since the DCZ ordinance does not provide any standards, the Willans, the building inspector and particularly the local board of adjustment are required to rely solely on subjective criteria to determine whether the proposed

addition was permissible. That DCZ reached a different conclusion from the Willans and the building inspector's as to the ordinance's meaning hardly justifies the harsh outcome of this litigation, especially since the root of the entire controversy can be traced directly to the lack of specificity in the DCZ ordinance.

Our antipathy to statutes or ordinances that are impermissibly vague was explained in Grayned v. City of Rockford, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972):

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who *65 apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. [Id. at 108-09, 92 S. Ct. at 2298-99, 33 L. Ed. 2d at 227-28 (footnotes omitted).]

In State v. Cameron, 100 N.J. 586 (1985), this Court recently struck down a municipal ordinance regulating "churches and similar places of worship," because we found the language impermissibly vague as applied to appellant:

We conclude that, under these circumstances, the ordinance does not give fair warning or notice to enable a person of average intelligence and experience to know what activities could turn his or her home into a church. Further, the ordinance does not foreclose unguided discretion in its application; it provides no sufficient assurance that its broad and undefined terms could be fairly, consistently, and uniformly enforced. [Id. at 602.] It is uncontroverted that in this case the provisions of the DCZ ordinance misled not only the Willans and their architect but also the local building inspector. The ordinance's definitions of single-family and Two-family dwellings were facially inconsistent. Moreover, they appear to be devoid of standards that would distinguish one from the other. In this context, the DCZ Administartor conclusion that the altered residence is a Two-family dwelling is entirely subjective, lacking the benefit of standards that would guide the Administartor's exercise of its administrative discretion.

The allowance of this building permit is neither the grant of a "variance" nor an "exception" nor an extension of the use of these premises. It is rather the grant of a logical, reasonable and natural structural change in the building which neither increases any nonconformity of its use nor violates any provision of the zoning ordinance and in nowise affects the general welfare of the neighborhood or of the adjoining property owners. Yocum Zoning Case 393 Pa. 148 (1958)

In St. Andrew's Church's Appeal, 67 Pa. 512, 518, 519, where there was a restriction that no building should be built to be used for purposes other than as and for a private dwelling-house, it was held that the covenant was "directed against the building alone, not the subsequent use, and when a building is lawfully erected on either of the lots, so far as that building is concerned, the covenant is at an end." It was said (p. 520), that "covenants . . . which restrain a man in the free enjoyment of his property are not to be extended by implication."

In Hoffman v. Parker, 239 Pa. 398, 86 A. 864, where there was a restriction prohibiting the erection, inter alia, of any building or buildings other than dwellings, it was held that this did not prohibit the use by an occupant of the basement of the premises for the sale of food. The court pointed out that the objection raised was to the use to which the building was being devoted and not to the erection of the building, and (p. 399, A. p. 865) that "Such restrictions . . . are not extended beyond their plain and necessary intent." The building having been erected as a dwelling house there was no violation of the terms of the restriction merely because of the subsequent use to which it was put.

In Johnson v. Jones, 244 Pa. 386, 90 A. 649, the restriction was that "nothing but a . . . dwelling house. . . shall ever be erected upon any part of the said land." A purchaser prepared to erect thereon a series of buildings, each to be four stories in height, each story to contain two separate apartments or flats for use as housekeeping apartments. It was held that this did not involve any violation of the restriction. The court stated (p. 389, A. p. 650) that "all doubts are to be resolved against the restriction and in favor of the free and unrestricted use of the property."

In Hamnett v. Born, 247 Pa. 418, 93 A. 505, the restriction was that "no more than one dwelling house shall be erected or maintained on each forty (40) feet of land." It was held that this restriction was not violated by the erection of duplex houses, each designed for the occupancy of two families and so arranged as to furnish each family with a complete and independent set of apartments. It was again pointed out that the covenant was directed only against the construction, not its subsequent use. The court said (p. 420, A. p. 505): "The fact that the building proposed is a single structure intended for dwelling purposes brings it within what is permitted under the restriction; the fact that it is intended to accommodate a number of families does not bring it within what is forbidden."

In Rohrer v. Trafford Real Estate Co., 259 Pa. 297, 102 A. 1050, where there was a restriction that but "a single dwelling house" should be erected on the lot, it was held that a duplex dwelling or apartment house did not constitute a violation of the restriction, the test being whether the building is a single structure intended for dwelling purposes and not whether it was intended to house more than one family. The court said (p. 299, A. p. 1051): "We agree with the court below that the stipulation was for a single house or structure, and not for a house for a single family; and that, if the latter had been intended, it would have been easy to say so." And it was once more repeated that "`Covenants of this nature, which restrain a man in the free enjoyment of his property are not to be extended by implication.'"

In Satterthwait v. Gibbs, 288 Pa. 428, 135 A. 862, where there was a restriction that "not more than two houses . . . shall be erected on said premises," the court stated (p. 431, A. p. 863): "Covenants restricting the use of land are construed most strictly against one claiming their benefit and in favor of free and unrestricted use of property; a violation of the covenant occurs only when there is a plain disregard of the limitations imposed by its express words: . . . . It does not extend to limitations arising by implication: . . . . Under clause (a) of the restrictive covenant, only `houses' could be built upon the property. `House,' in common speech, embraces `every form of structure for human habitation' . . . ." Accordingly it was held that the erection of an apartment house on the lot did not violate the restriction.

In Peirce v. Kelner, 304 Pa. 509, 156 A. 61, it was held that a restriction that "not more than one building other than a private stable and necessary outbuildings shall ever be erected or placed upon said lot of ground" did not forbid the construction of an apartment house. Cases hereinbefore referred to were cited with approval and the same principles were repeated (pp. 515, 516, A. p. 63), namely, that "Restrictions . . . [cannot] be enforced, unless they appear in express terms. . . . Reservations upon the use of land are never favored by the law; hence it follows that such provisions are never to be extended by implication."

It will thus be seen that all the authorities* are uniform to the effect that a restriction against the erection of a building other than a "house" or a "dwelling house" is a restriction only in regard to the type of construction and not the subsequent use, and that if any restriction on use is intended it should be plainly expressed and not left to implication. Of course, the term "house," like all other terms, does not have an unlimited connotation. While it is defined in Webster's International Dictionary as "A structure intended or used for human habitation; especially, a human habitation which . . . is intended for the private occupation of a family or families," its common and accepted import certainly does not cover the conception, for example, of a large modern apartment building. But there is a difference between such a building and a structure which in size and appearance, as in

the present case, conforms to the popular idea of a "house" and is generally so regarded even though it may be occupied by two or three families and therefore become designated as an "apartment house." It is this difference that distinguishes the case of Bennett v. Lane Homes Inc., 369 Pa. 509, 87 A.2d 273, — the case which the court below erroneously thought was determinative of the present issue. There the restriction was that "not more than one house, same to be detached or semi-detached, and private garage to be used in connection therewith, shall be erected on each lot with a frontage of at least 24 feet." It was held that this restriction prevented the erection of a three-story, 34-unit apartment building built on a frontage of 9 lots on one street and 6 lots on another, with overall dimensions of 151 feet by 160 feet, and which, since it was intended to house 34 families, would require a multitude of mechanics, janitors, and other service personnel. And while it might be objected that the difference thus pointed out is merely one of degree, we may remind ourselves that, as Mr. Justice HOLMES observed, many, if not most, legal questions resolve themselves into problems of degree rather than of kind. A 34-family apartment building is not, in ordinary parlance, a "house," but a two-story structure practically identical in size and appearance with all the other houses on the block is a house, even though it may be referred to as an "apartment house" if it accommodates two or three families.

It is our conclusion, therefore, that there is nothing in the present restriction that "not more than one house shall be erected on each lot" which would justify an interpretation that would make it read: "that not more than one single-family house shall be erected on each lot." If the restriction were so intended it should have been so expressed. And in view of that conclusion it becomes unnecessary to discuss other questions raised by defendants, such as plaintiffs' laches, their acquiescence in previous violations of the restriction, the alleged change in the neighborhood, and the admissibility of testimony of the original grantor, Wingate, that the restriction was not intended to limit the number of families in the individual dwelling and that by the expression "one house" there was meant merely "a single edifice."
That the invasion of the property of plaintiff in error was serious and highly injurious is clearly established; and, since a necessary basis for the support of that invasion is wanting, the action of the zoning authorities comes within the ban of the Fourteenth Amendment and cannot be sustained. 277 U.S. 183 (1928) NECTOW v. CITY OF CAMBRIDGE ET AL.

Short-term rental was a permitted use for property in a single-family residential district under the City of Cedarburg's zoning code. A zoning board cannot arbitrarily impose time or occupancy restrictions in a residential zone where there are none adopted democratically by the city. There is nothing inherent in the concept of residence or dwelling that includes time. HEEF Realty and Investments, LLP v. City of Cedarburg Board of Appeals, 2015 WI App 23, 361 Wis. 2d 185. 861 N.W.2d 797, 14-0062. 10.04 RESTRICTIONS

The use of the Willans single family dwelling is still designed for their personal use and will be exclusively occupied by the Willan family. Nothing has changed from before the addition or any plans to change after the addition was started, because only the Willan family will be exclusively occupying the residence. How the Willans get in and out of their single-family dwelling cannot be expressly controlled by DCZ based upon these two principles, there is nothing in DCO currently that expressly regulates how a person gets in and out of their single-family dwelling, and secondly since what the Willans are doing poses no public health or safety issue, DCZ cannot now make up a new ordinance without board approval and enforce it only against the Willans. In this case DCZ is essentially doing just that, by jumping the gun on an unsubstantiated enforcement action that the Willans are using their property as a duplex in violation of DCZ ordinance by changing the use, even though they were told by the Willans it was still remaining a single-family dwelling exclusively occupied by the Willan Family. The Willans are not changing their use of the single-family dwelling, and to deny a permit based upon a definition that does not pertain to the willans planned usage is unconstitutional and a usurpation of power that DCZ does possess. The building permit issued by the Town of Cottage Grove clearly shows that the building permit has the following trades of, Construction, HVAC, Electrical and Plumbing checked on the permit. DCZ has had a copy of the permit since March 17, 2017 so to claim that the Willans misrepresented to the court what the Willans were doing is clearly a false claim. All DCZ had to do was contact Mr. Viken to get copies of the

plans and to discuss why Mr. Viken told the Willans why they didn't need a zoning permit. We all heard both Mr. Gault, and DCZ administrator Hans Hilbert tell all of us, based upon their knowledge of their site visit and what the file showed, the Willans could get a permit in 30 minutes or less." Their words your honor, not mine! Here is the bottom line the Willans have a single-family dwelling that is going to be exclusively occupied by the Willan family. We are legally entitled to a zoning permit to be issued by current DCO 10.01 (21) Dwelling. (a) Single family dwelling. A building designed for and occupied exclusively as a residence for one (1) family.

WHEREFORE, Willans demand the issuance of a zoning permit consistent with DCO, case law above, terms and definitions, and all the arguments of this brief

1. For a zoning permit to be issued,
3. For our costs spent defending our rights; and
4. For such further and additional relief as the board shall find just and appropriate

Respectfully Submitted,

5-4-17

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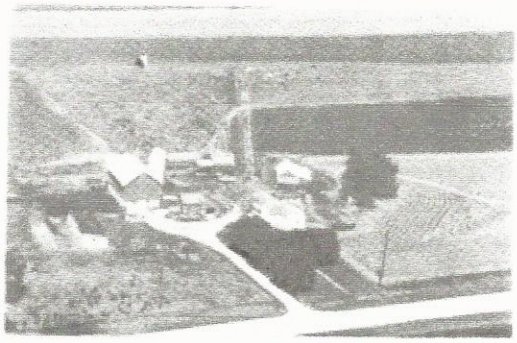
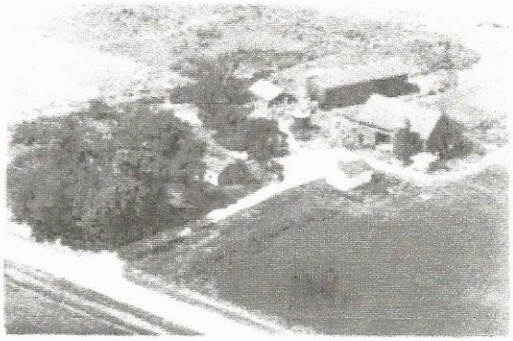
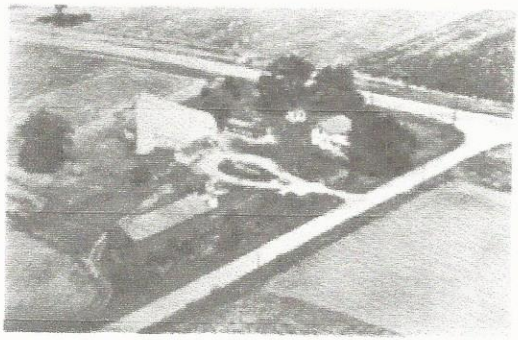


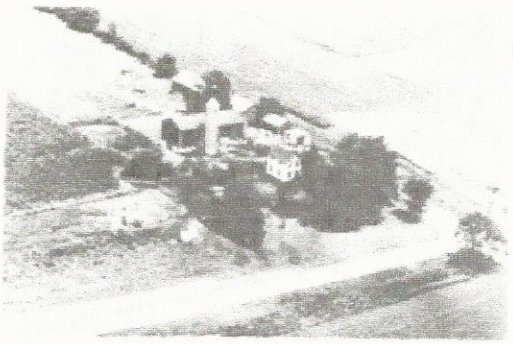
HAACK, JEROME
Cottage Grove Sec. 21 Rt. 1
80 acres



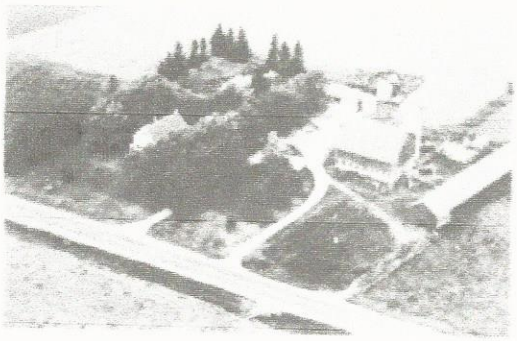
HAMMOND, ROBERT L.
Cottage Grove Sec. 20 Rt. 1
160 acres



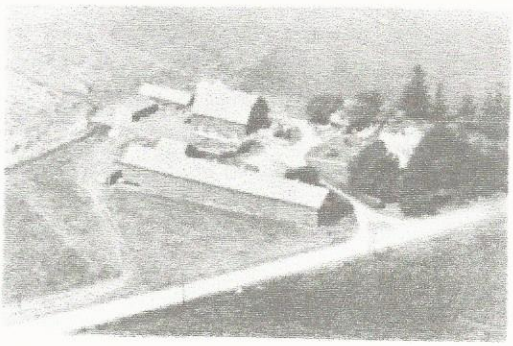
HAHN, BERT
Cottage Grove Sec. 7 Rt. 1
80 acres



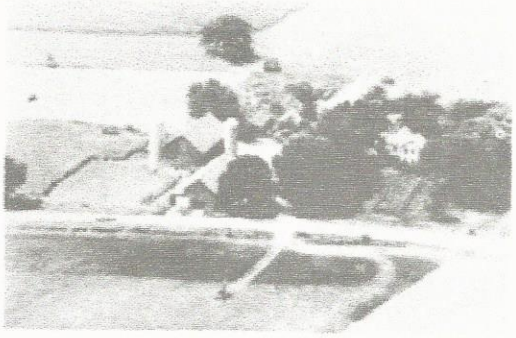
HELGELAND, KENNETH
Cottage Grove Sec. 4 Rt. 1
100 acres



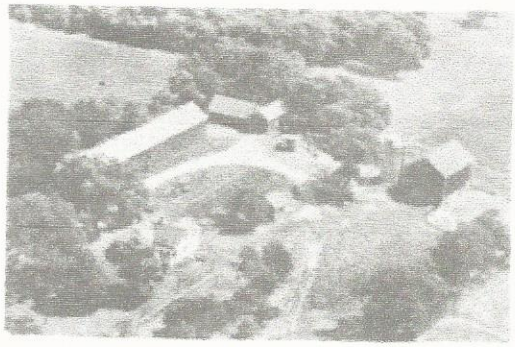
HATLEBACK, DAVID
Deerfield Sec. 36 Rt. 1
78 acres



HELGESON, PAUL
Cottage Grove Sec. 34 Rt. 1
59 acres



HALVERSON, ERNEST and HANS
Cottage Grove Sec. 22 Rt. 1
170 acres



HELGESTAD, CARL
Cottage Grove Sec. 28 Rt. 1
80 acres