



Dane County Board of Adjustment

Decision of the Dane County Board of Adjustment

Administrative Appeal: 3668 (DCPVAR-2014-03668 Oak Park Quarry)

FINDINGS OF FACT

Having heard the testimony and considered the evidence presented, the Board determines the facts of this case to be:

Filing Date: March 13, 2015.

Meeting notice published: April 9 & 16, 2015, Wisconsin State Journal.
Affidavit of publication/posting is on file.

Hearing Date: April 23, 2015.

Appellant: Jon Halverson and Oak Park Quarry, LLC (Mitchell Olson, Axley Brynerson, LLP, Agent)

- A. The property in question is known as the Oak Park Quarry which is located at 3528 Oak Park Road, Section 29, in the Town of Deerfield.
- B. There is a mineral extraction operation located on the property operating under Conditional Use Permit #2103.
- C. The 181-acre property was owned by Vernon Mandt from 1959 until 2010 when it was sold to the current owner, Oak Park Quarry, LLC.
- D. In 1969 the Dane County Code of Ordinances was amended to regulate mineral extraction by requiring a conditional use permit to be issued prior to extraction activity. At that time existing mineral extraction sites were required to be registered with the County in order to continue as a legal non-conforming mineral extraction operation without a conditional use permit.
- E. The record in the office of the Zoning Administrator shows that N. Carpenter and Son had tried to register the Vernon Mandt Property located in Section 29 of the Town of Deerfield for a "rock quarry comprising of 10 to 15 acres of rock".
- F. The Zoning Supervisor (Administrator) in 1969, William Massarene, reviewed aerial photography for the requested site and denied the property for registration. The registration report notes "no" as being as an existing extraction site. The area was not mapped in the Non-conforming Mineral Extraction Maps and not included as a nonconforming site.
- G. In 1969, Dane County Zoning Supervisor William Massarene determined that the Mandt property was not an existing mineral extraction site and thus not registered as a non-conforming site.
- H. Mr. Mandt obtained a mineral extraction permit M81-61, in 1981 to allow mineral extraction. Mr. Mandt continued to obtain conditional use permits (CUP) throughout the years for mineral extraction to keep his property in conformance with current zoning regulations. He obtained CUP #427 in 1985, CUP #1316 in 1995, and CUP #1757 in 2002. Mr. Mandt also obtained the

current conditional use permit, CUP #2103 that allows the extraction of non-metallic minerals on the property to date.

- I. The current owner, Oak Park Quarry LLC, is operating a mineral extraction site on the property under the conditions of CUP 2103. There is a communication tower on the property that is allowed under CUP 1596. The remaining land is being agriculturally cropped which is permitted by right in the A-1 Exclusive Agriculture Zoning District.
- J. The appellant requests an appeal of the Zoning Administrator's determination that a non-conforming status does not exist in regard to the Oak Park Quarry property.

CONCLUSIONS OF LAW

Based on the above findings of fact the Board concludes that:

The zoning administrator acted within his authority when issuing a March 3, 2015 determination in regard to a non-conforming status of the Oak Park Quarry property :

- The Zoning Administrator has the authority and followed the proper procedures in determining the registration status of the property.
- The Board of Adjustment followed the legal standards, made an unbiased decision based on fair and reasonable evidence.
- The appellant did not provide sufficient evidence to support that the lands in question had a legal non-conforming status to allow mineral extraction without an approved conditional use permit.
- The cases cited by the appellant regarding Scribner's errors and mutual mistakes of fact did not share similar facts in that they corrected errors or mistakes within a year or two of the error being made. None of the cited cases were anywhere near 45 years later as in this appeal.
- Aggrieved parties are afforded a reasonable amount of time to have errors of the Zoning Administrator corrected by the Board of Adjustment, however the timeline of this appeal was found to be beyond a reasonable amount of time.
- The Board found that the appeal was of a zoning determination made in 1969 during the initial mineral extraction registration process.
- The County Board has defined procedures for obtaining conditional use permits and the Board of Adjustment is not the proper venue for attempting to dispute competing property right interests.
- The Zoning Administrator's brief correctly summarized the relevant law.

On the basis of the above findings of fact, conclusions of law and the record in this matter the board **affirms** the Zoning Administrator's enforcement of the zoning code.

Appeals. This decision may be appealed by a person aggrieved by this decision or by any officer, department, board or bureau of the municipality by filing an action in certiorari in the circuit court for this county within 30 days after the date of filing of this decision. The municipality assumes no liability for and makes no warranty as to reliance on this decision if construction is commenced prior to expiration of this 30-day period.

I certify that this is the decision of the Dane County Board of Adjustment:

Steven Schulz, Chairman

Sign:



Date: 5/28/15

Filed with the Dane County Planning and Development Department, Zoning Division:

Todd Violante, Director

Sign:



Date: 5/29/15