
**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

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HAROLD LEVANDER
1910-1992
•
ARTHUR GILLEN
1919-2005
•
• ROGER C. MILLER
1924-2009

*ALSO ADMITTED IN WISCONSIN
◊ALSO ADMITTED IN NORTH DAKOTA
◊ALSO ADMITTED IN MASSACHUSETTS
◻ALSO ADMITTED IN OKLAHOMA

MEMO

TO: Sunfish Lake Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: October 29, 2014
RE: Agreement Relating to Land Use with Respect to Property at 2566 Delaware Avenue – October 27, 2014 City Council Meeting, Agenda Item 6(c)

Section 1. Background. Michael Boyle and Crystal Boyle applied to the City of Sunfish Lake for major site and building plan approval and three conditional use permits approval to allow construction of a new home, garage and pool terrace on their property at 2566 Delaware Avenue. The City granted approval of the major site and building plan and approval of the conditional use permits by City Resolution No. 14-27.

There is a “bonus room” above the garage. When the City approved the plans, the City wanted to make sure that the bonus room would not be considered a second dwelling unit. In determining what is a dwelling unit, the courts have typically analyzed whether the space has a separate dedicated access and whether the space has a free standing kitchen/cooking portion that is being used only by occupants that are not part of the family using the main kitchen found in another part of the home. In this instance, the access to the bonus room is not separate or dedicated; rather, access to the bonus room comes from and through the main part of the house. There were also statements to the effect that the landowner would not have any kitchen facilities. In light of that situation, the judgment was made that the bonus room did not constitute a separate dwelling unit.

The landowner would now like to have an auxiliary kitchenette in the bonus room comprising a sink, microwave and refrigerator. The integrated access would remain the same. There does not appear to be any attempt to create a separate dwelling unit because the kitchenette will be used only by occupants of the home who also use the main kitchen. This is not unlike having a microwave and refrigerator in the basement rec-room. However, to be cautious, the city planner and city attorney asked that the landowner enter into the attached “Agreement Relating to Land Use with Respect to Property at 2566 Delaware Avenue” (Agreement) which reaffirms that the

bonus room is not a separate dwelling unit and cannot be used as a second dwelling unit.

The attached Agreement supplements the approvals given by the City. The purpose of the Agreement is to ensure that the so-called “bonus room” located above the garage to be constructed on the property is used only as part of the overall single-family dwelling in conformance with the City’s Zoning Code and is not used as a separate distinct additional single family dwelling. The zoning of the property is for a single-family dwelling. The bonus room located above the garage has a kitchenette (with a sink), sleeping amenities and toilet facilities. Both the main kitchen as well as the kitchenette in the bonus room will be used interchangeably by the occupants and there is not any intent on behalf of Michael Boyle and Crystal Boyle to establish a residence for two separate family units. The kitchenette in the bonus room is incidental to the main kitchen and is not considered a second free standing kitchen. The City seeks to ensure that the use of the residence will remain only as a single-family dwelling and that there will not be separate family units respectively using the two distinct kitchens.

Section 2. Agreement Relating to Land Use with Respect to Property at 2566 Delaware Avenue. The salient terms of the Agreement are:

- With respect to occupancy of the residence on the property, the residence shall only be used and occupied as a single-family dwelling within the meaning of the City’s Zoning Code.
- With respect to the two kitchen facilities within the residence of the property (the main kitchen and the kitchenette in the bonus room), the main kitchen shall be used by the single-family unit as a primary kitchen and the kitchenette shall only be used as a secondary incidental kitchen facility by the same single-family unit that uses the main kitchen. The two kitchen facilities shall not be used by different family units; the residence shall only be used as a dwelling for a single-family within the meaning of the City’s Zoning Code. The bonus room shall not be used as a separate dwelling place in addition to the main portion of the home, but rather shall be used as an integral part of the main portion of the home. The bonus room shall only be accessed from the main portion of the home.
- The bonus room shall not be rented or sublet.
- The City agrees to allow the kitchenette with sink, microwave and refrigerator in the bonus room above the garage.

Section 3. Council Action. The Council is asked to consider the attached Agreement Relating to Land Use with Respect to Property at 2566 Delaware Avenue at the November 5, 2014 Council meeting.

Attachment

AGREEMENT RELATING TO LAND USE
WITH RESPECT TO PROPERTY AT 2566 DELAWARE AVENUE,
SUNFISH LAKE, DAKOTA COUNTY, MINNESOTA

THIS AGREEMENT is made this 5th day of November, 2014, by and between the City of Sunfish Lake, a Minnesota municipal corporation (City) and Michael D. Boyle, Trustee of the Michael D. Boyle SB Trust under Agreement dated May 10, 1992 (hereafter referred to as Landowner). Based on the agreements, covenants, recitals and representations contained herein, the parties do hereby agree as follows:

ARTICLE 1
RECITALS

Recital No. 1. Michael D. Boyle, Trustee of the Michael D. Boyle SB Trust under Agreement dated May 10, 1992 (Landowner) owns fee title to the Subject Property described on the attached Exhibit A. The Subject Property is located in the City of Sunfish Lake.

Recital No. 2. Landowner applied to the City of Sunfish Lake (City) for major site and building plan approval and three conditional use permits approval to allow construction of a new home, garage and pool terrace on the Subject Property. The City granted approval of the major site and building plan and approval of the conditional use permits by City Resolution No. 14-27.

Recital No. 3. This Agreement supplements the approvals given by the City. The purpose of this Agreement is to ensure that the so-called “bonus room” located above the garage to be constructed on the Subject Property is used only as part of the overall single-family dwelling in conformance with the City’s Zoning Code and is not used as a separate distinct additional single family dwelling. The zoning of the Subject Property is for a single-family dwelling. The bonus room located above the garage has a kitchenette (with a sink), sleeping amenities and toilet facilities. Michael Boyle and Crystal Boyle occupy the residence. Both the main kitchen as well as the kitchenette in the bonus room will be used interchangeability by the occupants and there is not any intent on behalf of Landowner to establish a residence for two separate family units. The kitchenette in the bonus room is incidental to the main kitchen and is not considered a second free standing kitchen. The City seeks to ensure that the use of the residence will remain only as a single-family dwelling and that there will not be separate family units respectively using the two distinct kitchens.

ARTICLE 2

DEFINITIONS

2.1 Terms. The following terms, unless elsewhere defined specifically in this Agreement, shall have the following meanings as set forth below.

2.2 Landowner. Landowner means Michael D. Boyle, Trustee of the Michael D. Boyle SB Trust under Agreement dated May 10, 1992, and his successors and assigns.

2.3 City. City means City of Sunfish Lake, a Minnesota municipal corporation.

2.4 Subject Property. Subject Property means certain real property located in the City of Sunfish Lake, Dakota County, Minnesota, and legally described on the attached Exhibit A.

ARTICLE 3

AGREEMENT RELATING TO USE OF SUBJECT PROPERTY

3.1 Use of Subject Property. The Subject Property contains a residence. With respect to occupancy of the residence on the Subject Property, the residence shall only be used and occupied as a single-family dwelling within the meaning of the City's Zoning Code.

3.2 Use of Kitchen Facilities. With respect to the two kitchen facilities within the residence of the Subject Property (the main kitchen and the kitchenette in the bonus room), the main kitchen shall be used by the single-family unit as a primary kitchen and the kitchenette shall only be used as a secondary incidental kitchen facility by the same single-family unit that uses the main kitchen. The two kitchen facilities shall not be used by different family units; the residence shall only be used as a dwelling for a single-family within the meaning of the City's Zoning Code. The bonus room shall not be used as a separate dwelling place in addition to the main portion of the home, but rather shall be used as an integral part of the main portion of the home. The bonus room shall only be accessed from the main portion of the home.

3.3 No Renting. The bonus room shall not be rented or sublet.

3.4 Kitchenette Items. In consideration for the agreements and covenants of the Landowner contained herein, the City agrees to allow the kitchenette with sink, microwave and refrigerator in the bonus room above the garage.

ARTICLE 4

MISCELLANEOUS

4.1 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Subject Property, and shall be binding upon the parties and the successors and assigns of the parties.

4.2 Amendment and Waiver. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any other document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of the Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

4.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

4.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first stated above.

CITY OF SUNFISH LAKE

By: _____
Molly Park, Mayor

ATTEST:

By: _____
Catherine Iago, Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 5th day of November, 2014, before me a Notary Public within and for said County, personally appeared Molly Park and Catherine Iago, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Clerk of the City of Sunfish Lake, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

LANDOWNER

Michael D. Boyle, Trustee of the Michael D.
Boyle SB Trust under Agreement dated May 10, 1992

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me a notary public on November
____, 2014, by Michael D. Boyle, Trustee of the Michael D. Boyle SB Trust under Agreement
dated May 10, 1992.

Notary Public

This Instrument Was Drafted By:

Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
(651) 451-1831

**After Recording, Please Return This
Instrument To:**

Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF SUBJECT PROPERTY

The North 300 feet of the South 750 feet of the West 50 acres of the South Half of the Southwest Quarter of Section 31, Township 28, Range 22, except the West 735 feet thereof, Dakota County, Minnesota.