

**STORY COUNTY, IOWA  
CERTIFICATE OF APPEAL OF DIRECTOR’S DECISION  
AND WRITTEN FINDINGS OF FACT**

**IN THE MATTER OF THE APPLICATION OF:** : **ADM02-20**  
**Andrew Swanson, 64905 190<sup>th</sup> Street, Nevada,** :  
**IA for the request of an Appeal to the Director’s** :  
**decision involving the property located at 19269** :  
**650<sup>th</sup> Avenue, Richland Township,** :  
**unincorporated Story County Section, 21,** :  
**Township 84 Range 22 (Parcel ID Number 07-** :  
**21-200-405)** :

**March 18, 2020 Story County Board of Adjustment Meeting**  
**MOTION: The Story County Board of Adjustment supports the director’s decision to not**  
**issue a zoning permit or approve an agricultural exemption to Mr. Swanson to place the**  
**railroad caboose on the property located at 19269 650th Avenue.**

**Motion: Winfrey**  
**Second: Neubauer**  
**Ayes: Winfrey, Neubauer, Brekke, McGill**  
**Nays: None**  
**Not Voting: None**  
**Absent: Schneider**  
**Vote: (4-0)**

**Written Findings of Fact**

**Case Summary:** On March 6, 2020, Andrew Swanson, 64905 190<sup>th</sup> Street, Nevada, IA submitted a request to appeal the Director’s (Planning and Development Department) Decision to the Story County Board of Adjustment that a zoning permit cannot be issued or an agricultural exemption cannot be approved to place a railroad caboose on his property located at 19269 650<sup>th</sup> Avenue, in Richland Township.

**Background/Timeline**

- Mr. Swanson submitted a letter to the Planning and Development Department on February 3, 2020 identifying his plans to purchase the railroad caboose. He inquired about Story County regulations addressing his plan to place the railroad caboose on his property at 19269 650<sup>th</sup> Avenue.
- Mr. Swanson indicated that the railroad caboose would be considered a backyard accessory. He also mentioned his plan to construct a single family dwelling on the property but did not have construction plans yet. However, the caboose was available now. If a dwelling was not constructed on the property he indicated he would request to use the railroad caboose as storage.
- Upon review of the letter, I called Mr. Swanson to get a clearer understanding of his plans. He communicated to me that he was interested in railroad cabooses and had an opportunity to purchase a railroad caboose currently used by the Boone Convention and Visitors Bureau that is located in the City of Boone. He indicated that he wanted to place the railroad caboose, along with railroad tracks on his property near one of the existing two accessory structures.

- Mr. Swanson emailed a photo of the railroad caboose to me on February 7, 2020.
- I responded to Mr. Swanson's letter on February 10, 2020 and provided information about principal permitted uses, accessory uses, and conditional uses in the A-1 Agricultural District, and I indicated that a railroad caboose is not a principal permitted use, accessory use, or a conditional use in the A-1 Agricultural District. I also provided information about the definition of accessory structure, and that our department could not issue a zoning permit for the railroad caboose. I provided two options for him to consider in response to my decision from the Story County Land Development Regulations, appealing my decision to Board of Adjustment, and submitting a text amendment requesting a change to the Story County Land Development Regulations to address the railroad caboose.
- Mr. Swanson responded by dropping off a second letter to the Planning and Development Department for me on February 11, 2020. He stated that he questioned my decision, he asked if an item on wheels qualified as real property in need of a permit, and if he could request an agricultural exemption. He also listed other possible uses of the railroad caboose including, a backyard addition for looks or storage, and playground equipment or possible museum. He lastly wanted to know about his penalties or remedies other than the options I provided in my first letter.
- I responded to Mr. Swanson's second letter on February 19, 2020 by restating my previous response and the two options, in addition to Story County Land Development Regulation Chapter 92.11 which requires compliance with the County's ordinance. I also answered his questions and stated that a railroad caboose was a manufactured item intended for the railroad industry, and that a railroad caboose did not meet the items addressed under Story County's or the state's agricultural exemption provisions.
- Mr. Swanson sent me an email on February 20, 2020 generally asking if there were any code or ordinance that would allow the railroad caboose as a museum property or private property. He also asked if in Story County it was a crime and or violation punishable under the law to be in possession of the railroad caboose.
- Mr. Swanson came in to the Planning and Development Department again to discuss my second response. I responded by talking to him and showing him Story County's zoning regulations and how a railroad caboose was not a principal permitted, accessory use, or a potential conditional use in the A-1 District. I also showed him the section from the ordinance that addresses agricultural exemptions and that the provision did not address railroad cabooses or cover his plan to place a railroad caboose on his property.
- Mr. Swanson came into the Planning and Development Department again on March 3, 2020 to show me photos of the railroad caboose with an outdoor electric meter and interior wiring. He asked if I still thought it was a manufactured item intended for the railroad industry. I asked him about the location of the railroad caboose again and he confirmed it was in the City of Boone and I responded that every jurisdiction's ordinances addresses situations like this differently and that the photos did not change my decision and I referred him to the two options I previously provided if he did not agree with my decision.
- Mr. Swanson submitted the appeal on March 6, 2020. The appeal provides background information, a statement about agricultural exemptions, information about permitted uses in the A-1 District, his analysis, and a conclusion.

### **Analysis**

***The request*** – Place a railroad caboose on private property at 19269 650<sup>th</sup> Avenue, in Richland Township, in unincorporated Story County.

***Zoning and land use at property*** – subject property is zoned A-1 Agricultural District and contains 29.09 acres (25 acres are in agricultural row crops). From review of an aerial, there are two accessory structures approximately 24'x48' and 18'x28' located within an approximate 3 ½ acre grassy and treed area. Mr. Swanson planned to place the railroad caboose in the grassy area of the property, near the accessory structures.

***Adjacent zoning and land use*** – zoned A-1 Agricultural District with agricultural row crops and five single family dwelling within ½ mile of the property. The parcels located north and west of property are also owned by Mr. Swanson. The Village of Fernald has various zoning districts, including R-1 Transitional Residential District, A-2 Agribusiness, and CLI-Commercial Light Industrial. Fernald is located just beyond ½ mile east of the property.

***Railroad caboose*** – manufactured item for the railroad industry. The railroad caboose is currently located in the City of Boone on a commercial property and used by the Boone Convention and Visitors Bureau.

**Director's Decision** - a railroad caboose is not a principal permitted use, accessory use, or something that may be requested with a conditional use permit in the A-1 Agricultural District. Nor is a railroad caboose identified in Story County's or state law as being agricultural exempt. Consequently, a zoning permit cannot be issued and an agricultural exemption cannot be approved to place the railroad caboose on the property.

**Options to address Director's decision**

1. Appeal Director's Decision
2. Submit Text Amendment

**Applicable Story County Regulations**

Story County Land Development Regulations 86.04 A-1 Agricultural District, Statement of Intent. The A-1 District is intended and designed to accommodate land use compatible with agriculture and to protect agricultural land from encroachment of urban land uses. Also, in part, the Cornerstone to Capstone (C2C) Comprehensive Plan designates priority agricultural land as Agricultural Conservation Areas that are intended to preserve rural character.

Principal permitted uses in the A-1 Agricultural District zoning of the property including agricultural row crop and/or livestock production, single family dwelling, horse stables, and cemeteries.

When a principal permitted use is established in the A-1 District, an accessory use may also be permitted including, accessory buildings, home businesses, noncommercial wind energy conversion systems, solar energy systems, and towers and certain Conditional Uses.

Chapter 85.08 Definitions

Accessory Structure (building). A structure detached from a principal building located on the same lot, parcel, or tract and customarily incidental and subordinate to the principal building or use.

Also, Story County Land Development Regulations Chapter 85.07 Exemptions, states in part, "The following exemptions may apply to certain types of development located in unincorporated Story County; however such uses shall not be exempt from the standards set forth in Chapter 87 Land Division Requirements or exempt from adopted Floodplain Management Ordinance Chapter 80 of this Code of Ordinances.

1. Agricultural Exemption. Except to the extent required to implement Section 335.37 Code of Iowa, no regulations adopted under the Ordinance apply to land, farm houses, farm barns, farm outbuildings, or other buildings or structures that are primarily adapted by reason of nature and area, for use for agricultural purposes, while so used."

Chapter 85.08 Definitions

Building. In part, means any structure having a roof supported by walls or by columns designed or intended for enclosure, shelter or housing of persons, animals or chattels.

Structures. Means a combination of materials to form construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

**Applicable State Regulation**

Under Code of Iowa 335.2 Farms Exempt.

Except to the extent required to implement section 335.27, no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural

purposes, while so used. However, the ordinances may apply to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream.

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Neubauer asked if the caboose was inside of a building if it would then be permitted. Moore stated that he didn't think that was what Mr. Swanson's intent for the caboose and that the railroad caboose would still be located on the property. McGill asked if a CUP could be applied for. Moore stated that there is nothing in chapter 90 that addresses a situation as proposed to place a caboose on provide property, even a possible museum type use, so a text amendment would likely be the best option. Brekke stated that it appears Swanson feels it would be legit with the provided code sections and asked how Moore responded to Swanson's response of feeling it was legit. Moore stated that he responded in the letters that it does not fit the definition of an accessory structure, building or a structure, nor under the definition of agricultural exemption. Brekke asked if the neighbors have concerns. Moore stated the County's ordinance does not require notices to be sent to land owners, so it is not known if neighbors have concerns. Moore stated that since 2016 there has been over 90 requests for agricultural exemptions and 96% of those were approved. Moore stated that he feels the intent for the language in the ordinance adapted for agricultural purposes does not include a railroad caboose. Winfrey asked if since there is not an agricultural purpose to the railroad caboose is the reason it wouldn't be an agricultural use. Moore stated that Mr. Swanson did indicate that the railroad caboose could be used to store plants, however, Moore read the code sections relating to agricultural exemption and the definitions for building and structure and stated that railroad caboose is not covered and its also not the intent of these sections to include a railroad caboose.

Andy Swanson spoke and stated that if he is going to acquire the caboose he wants to be able to use it. Swanson stated that he feels the caboose is a building, the caboose has not been used on the railroad for a long time, and the caboose has been adapted to another use. Swanson stated he does not plan to use it as a caboose, but only to set it on a track so that the steel wheels did not sink into the ground. Swanson stated that he feels if he stored seed or supplies in the caboose that it should be considered an agriculture exemption for use as an accessory structure since his farm is established. Swanson strongly believes that the caboose should not be considered as a railroad use because it is no longer usable as what it was initially intended for and because the caboose had been adapted to another use.

Neubauer asked about precedent being set for manufactured items and wondered if anyone had ever been denied or allowed such items as busses or RV's. Moore stated that he cannot recall a time that a request like this has been allowed. Moore stated that if the railroad caboose is considered a building, could a cable car, airplane, or ship be considered a building? Moore stated that the way the ordinance is set out it addresses certain things that are principal permitted uses. If a principal permitted use is established on a property, then an accessory use may be permitted. Moore stated that occasionally amendments are requested to allow for a use being proposed. This is how zoning works, if a proposed use is not identified in the ordinance, then the applicant may request a text amendment to the ordinance to include and/or identify the use. McGill stated that it seems it would not fall under the original intent of the code and he does not feel an agricultural exemption would allow the caboose either. Swanson stated that he had planned different types of wild flowers and native grasses, and he does not want the area plowed up in the future. He feels that preserving the land would be beneficial to the area where he would like to locate the caboose. Swanson feels that the county should consider changing the definition of a building and also questioned if there would be a difference between a shipping container that was originally designed to be used on a ship being used as a shed, and his proposal with the caboose. Moore asked Mr. Swanson if his intention was to keep the railroad caboose intact. Swanson stated that yes, he would like to keep the caboose intact.

McGill asked for direction from Moore to clarify what steps could be done next. Moore stated that he would like the board to support his decision that a zoning permit could not be approved or an agricultural exemption could not be supported and that Mr. Swanson could still pursue submitting a text amendment that addresses placement of the railroad caboose on his property. Moore further stated that prior to Mr. Swanson submitting a text amendment, he would be happy to meet with him to discuss his plans further and conduct research to share with Mr. Swanson on how other cities and counties in the area and midwest address placement of railroad cabooses. McGill stated that the way the law is written that he feels he would need to support the staff decision even though he believes the caboose is a good idea. Neubauer stated that he understands the argument but does not see the rail car falling within the definition. Winfrey stated that she worries about a precedent being set by allowing this exception or broadening the definition could create an issue.

As stated above, the Story County Board of Adjustment supported (Vote 4-0) the director's decision to not issue a zoning permit or approve an agricultural exemption to Mr. Swanson to place the railroad caboose on his property located at 19269 650th Avenue.

**Board of Adjustment Action on Written Findings of Fact**

**Date: April 15, 2020**

**VOTE:           Ayes               Nays**

**McGill**

**Brekke**

**Neubauer**

**Schneider**

**Winfrey**

**Vote:**

**Chair:** \_\_\_\_\_