

# Supplemental information for granting of our rezoning petition to the FP-B zoning district!

## INTRODUCTION

Thank you ahead of time, to the respective board members for this opportunity to present in writing our supplemental information to the petition for a rezoning. Our property is located in an agricultural preservation district. Under the current DCO zoning districts, the FP-B agricultural zoning district in a farm preservation district, is the only district offered under the zoning ordinance that will meet our current continued permitted by right uses in agricultural zoning. The FP-B zoning district is conducive with our previous vested agricultural zoning district under AG-1EX that we vested with the property on June 4, 2012.

Essentially what we are saying as a matter of law, under Wisconsin law, we are entitled to FP-B rezoning as a matter of right. We have been accustomed to using the permitted by right uses under AG-1 EX since we purchased the property in 2011. The FP-B district permitted by right uses are consistent with our planned and continued permitted by right vested agricultural uses. It is a material fact that the RR-2 zoning district Dane County zoning department illegally classified our property into during the comprehensive revisions without a hearing, does not accommodate permitted by right, nor a conditional use of our continued agricultural zoning district. As a matter of law, this rezoning petition is the only way under current Wisconsin law to obtain the agricultural zoning in a farm preservation district we had prior to the comprehensive revisions. FP-B only requires a minimum lot size of 20,000 square feet. Our property has four times that size with a 75-year-old agricultural barn still in use!

## **WISCONSIN STANDARD OF REVIEW FOR THE WILLANS SPECIFIC ZONING ORDINANCE REQUEST IN THIS CASE AMOUNTS TO A RESTORATION OF THE PROPERTY'S VESTED AGRICULTURAL ZONING DISTRICT TAKEN AWAY DURING THE COMPREHENSIVE REVISIONS IN 2019.**

Wisconsin is among the minority of United States jurisdictions that adheres to the Building Permit Rule, a bright-line rule vesting the right to use property consistent with current zoning at the time a building permit application that strictly conforms to all applicable zoning regulations is filed. Patricia E. Salkin, American Law of Zoning § 32:3, at 32-13—32-14 (2017). Golden Sands Dairy LLC v. Town of Saratoga, 381 Wis. 2d 704, 710 (Wis. 2018)

The Building Permit Rule is an exception to the general policy that "property owners obtain no vested rights in a particular type of zoning solely through reliance

on the zoning." *Zealy v. City of Waukesha*, 201 Wis. 2d 365, 381, 548 N.W.2d 528 (1996). The court of appeals based its analysis, in large part, on the nonconforming use doctrine. *Golden Sands II*, unpublished slip op., ¶14. The nonconforming use doctrine is implicated when lawful uses of land are made unlawful by a change in zoning regulations. *Des Jardin v. Greenfield*, 262 Wis. 43, 47-48, 53 N.W.2d 784 (1952).

The label "vested right" is a shorthand and conclusory label in property law for important property rights resulting from prior transactions, contracts, and uses of property. The concept has a long and winding history as an integral part of American property law, from the earliest days of the union. See, e.g., *Vanhorne's Lessee v. Dorrance*, 2 Dall. 304, 311, 1 L. Ed. 391 (C.C.D. Pa. 1795) ("It is immaterial to the state, in which of its citizens the land is vested; but it is of primary importance, that, when vested, it should be secured, and the proprietor protected in the enjoyment of it. The constitution encircles, and renders it a holy thing."); *Fletcher v. Peck*, 10 U.S. 87, 135 (1810) ("When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights."); *Wilkinson v. Leland*, 27 U.S. 627, 658 (1829) ("We know of no case, in which a legislative act to transfer the property of A. to B without his consent, has ever been held a constitutional exercise of legislative power. . . . On the contrary, it has been constantly resisted as inconsistent with just principles, by every judicial tribunal in which it has been attempted to be enforced."). The concept of vested rights has not had just a single home in the law. It has evolved primarily as a doctrine of state common law or constitutional law, and it also can be embodied in state and local zoning and similar statutory schemes. See, e.g., *Bickerstaff Clay Products Co. v. Harris County*, 89 F.3d 1481, 1487 (11th Cir. 1996) (doctrine of vested rights applied by district court derived from doctrine of equitable estoppel); *Lakeview Development Corp. v. City of South Lake Tahoe*, 915 F.2d 1290, 1294-95 (9th Cir. 1990) (vested rights doctrine was concept of state law, a species of government estoppel); *Lake Bluff Housing Partners v. City of South Milwaukee*, 540 N.W.2d 189 (Wis. 1995) (detailing the concept of vested rights in Wisconsin law); Wis. Stat. § 59.69(10)(a) (prohibiting new zoning ordinances from interfering with existing lawful uses).

The Wisconsin Supreme court said, "We hold that the Building Permit Rule extends to all land specifically identified in a building permit application. Consequently, just like *Golden Sands* has a vested right to use all of the Property for agricultural purposes, the Willans have a vested right to use their property for the permitted by right agricultural uses that were in effect on June 4, 2012. Therefore, we reverse the decision of the court of appeals." *Golden Sands Dairy LLC v. Town of Saratoga*, 381 Wis. 2d 704, 710 (Wis. 2018)

While acknowledging the general rule, some of the early zoning cases also noted that "where substantial rights had vested prior to the enactment of the law, a

landowner may acquire vested rights. State ex rel. Klefisch v. Wisconsin Telephone Co., 181 Wis. 519, 195 N.W. 544, 54g (1923). In Wisconsin, there have been two distinct exceptions that give rise to vested rights in existing zoning. The first exception, which is at issue in this case, is known as the Building Permit Exception. It arises through affirmative authorization by the local government in the form of a building permits " From the very beginning of zoning jurisprudence in this state, then, a building permit has been a central factor in determining when a builder's

## I. FACTS AND PROCEDURAL POSTURE

### A. The Willan's Permit Application

The Willans filed its original building permit application with Town of Cottage Grove on June 4, 2012. The application sought a permit to renovate the existing agricultural barn. At the time Willans filed its initial building permit application (June 4, 2012), The Town of Cottage Grove by statute relied upon Dane County zoning to administer its zoning ordinance. The Willans property is located in the Town of Cottage Grove dedicated agricultural preservation district, and the property was zoned AG-1EX. Though the property was substandard for that specific zoning district at the time, the property had the following vested permitted by right uses by way of the building permit rule:

AG-1EX zoning district vested permitted by right uses of 4407 Vilas Hope Rd.  
(2) Permitted uses. (a) Agricultural Uses, except those uses listed as conditional uses below. Keeping of livestock is prohibited on parcels smaller than 5 acres. (b) Agricultural Accessory Uses, except those uses listed as conditional uses in s. 10.123(3), and subject to the limitations and standards below.

1. Any residence lawfully existing as of February, 20, 2010 shall be considered a permitted use.
2. Rental of existing farm or secondary farm residences existing as of December 12, 2012, but no longer utilized in the operation of the farm.
3. Agricultural entertainment activities,
4. Farm related exhibitions, sales or events such as auctions, dairy breakfasts, exhibitions of farm machinery and technology, agricultural association meetings and similar activities, occurring on five days in a calendar year or less.
5. Small scale energy systems or electric generating stations, provided energy produced is used primarily on the farm. (f) Undeveloped natural resource and open space areas. (g) A transportation, utility, communication, or other use that is: 1. required under state or federal law to be located in a specific place, or; 2. is authorized to be located in a specific place under a state or federal law that specifically preempts the requirement of a conditional use permit

## CURRENT DANE COUNTY ZONING ORDINANCE

Let the Boards inquiry of the facts as it applies to the rezoning, start at the beginning of Dane County ordinance, under 10.001 TITLE, PURPOSE AND STATUTORY AUTHORIZATION.

(1) Title. This ordinance is known as the “Dane County Zoning Ordinance.”

(2) Purpose. The purpose of this chapter is

to:

(a) promote the public health, safety, convenience and general welfare; **The FP-B zoning ordinance created by Dane County board, is unambiguously designed, to be used in an agricultural preservation district like the Willans property is located in. The property we are rezoning is clearly located in an agricultural preservation area created by the town.**

**So, the board must consider this question; “Does the specific agricultural property location, agricultural aesthetic appearance, agricultural two sided neighboring property, in conjunction with Willans agricultural property and the Town of Cottage Grove comprehensive plan, promote the public health, safety, convenience and general welfare of our community?”**

(b) encourage planned and orderly land use development; **Our property has been an agricultural property for over 75 years, it is surrounded by corn fields or bean fields on both sides of the property and run consistently throughout the neighborhood. We are not developing anything, we are utilizing the character and history of the property for agricultural use consistent with FP-B zoning**

(c) protect property values and the property tax base; **Our property has enhanced both the property values of our property but the neighbors property values have increased. Our property taxes in 10 years have gone from under 4k a year to over 8k a year. We have helped not only protect values we have increased them double.**

(d) permit the careful planning and efficient maintenance of highway systems; **Our property is carefully laid out and all the structures on the property are within all the ordinance and state requirements for all properties located on county and town roads.**

(e) ensure adequate highway, utility, health, educational and recreational facilities; **The Willans are direct neighbors with Dane County hwy AB that owns 66’ of centerline. We have cleaned up the corner area from the trees and brush, and we continue to mow, all of which has made the corner**

safer for the property to promote the public health, safety, convenience and general welfare of the general public.

(f) recognize the needs of agriculture, forestry, industry and business in future growth; Our property goes right to this mandate. We are looking to continue a successful agricultural use consistent with the permitted by right uses of FP-B zoning of our property. The state of Wisconsin pays the Dane County and Dane County in exchange for that money, agrees to preserve agricultural uses through chapter 91 of Wisconsin Stats!

(g) encourage uses of land and other natural resources which are in accordance with their character and adaptability; Our property has a 75-year-old agricultural barn that was specifically made for agricultural uses and has been restored to continue those agricultural uses for many more years to come.

(h) provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; Our agricultural property has a full array of wind and solar potential uses that does not interfere with any permitted by right agricultural uses in the FP-B zoning district.

(i) encourage the protection of groundwater resources; We don't use any products manmade or otherwise in our permitted by right use in FP-B zoning district agricultural uses that would contaminate ground water. We drink our water and use it for our gardens, we clearly would not harm it

(j) preserve wetlands; the wetlands are surrounding our property, and there is nothing that would inhibit the preservation of current wetlands in the rezoning of our property into FP-B zoning district.

(k) conserve soil, water and forest resources; We have always collected rainwater in barrels to use in our agricultural growing uses and we will continue to be an advocate for all conservation.

(l) protect the beauty and amenities of landscape and man-made developments; We have invested over 100k dollars on our agricultural property in an effort to preserve and protect the beautiful agricultural barn and property.

(m) provide healthy surroundings for family life; Our property is a beautiful place to raise a family.

(n) promote the efficient and economical use of public funds; Dane County gets state money to promote agricultural preservation where the Willans property is located.

(o) to promote creation of employment opportunities; The Willans property has provided agricultural accessory employment opportunities not only for the Willans, but has provided good paying jobs for their employees.

and

(p) to support the continued existence of strong and economically viable towns as vital communities of Dane County. **Our FP-B zoning permitted by right uses, is to protect our town by creating a buffer between our property and the City of Madison and the Village of Cottage Grove. We have no desire to be any part of either of those communities**

## **THE BOARDS DECISION HAS TO BE BASED ON THE LAW NOT FEELINGS**

Another key factor to consider in the board's decision, is by reading all the laws associated with rezoning. We both must follow certain laws to obtain a correct zoning decision, and you have to consider the legislative intent of the farm preservation act. In our case, we have, we think, established that the area originally zoned for Permitted Agricultural purposes, has in fact, been developed and retained an agricultural character for the FP-B permitted by right uses of the ordinance.

It is true the neighborhood character has a hodge-podge of uses, including, residential, conditional use, commercial, nonconforming uses, and variances present in the area of the rezone, but they should not be allowed to set the standards, unless it is clear that they in fact determine the character of the area, which they do not here. The property is located in the Town of Cottage Grove dedicated farm preservation district, the specific property has been agricultural for over 75 years, the agricultural barn is 75 years old and is conducive to an agricultural use as defined by state law, and ordinance. The Willans have supplied over 10 million dollars in agricultural buildings to the agricultural industry. So, in considering those specific factors, the Character is agricultural.

The Dane County zoning permitted by right use, associated with any zoning district never requires any specific act of doing any of the permitted by right uses, in terms of frequency of use, or sets a time limit on zoning that it expires at a certain point that a use is not being actively used. The legal premise behind the ordinance is regulated control for the health and welfare of the community at large.

The specific language of Dane County's Agricultural zoning ordinance must be read in concert with the definitions, and permitted by right use, which tells a person exactly what they legally can use their property for, but under permitted by right uses, it doesn't define any control through regulation of the frequency of any act having to be used, other than to reregister mining properties administratively to preserve the permitted mining use by right, we are aware of.

Simply put, is, "if our property meets all the specific requirements of a proposed zoning district, it must be zoned accordingly! We only want the opportunity to

utilize the permitted by right uses in a farm preservation district. We have heard the saying from some of the Town board that we don't have enough acres to be a farm? Farms are defined under chapter 91, and the equal protection clause says, "if someone in the state of Wisconsin, is stupid enough to spend over 100k dollars renovating an old barn, they as a matter of law, have a specific right to try through zoning to use the permitted by right uses of an agricultural use, to make money, you must give it to them. Whether Julia and I fail is another constitutional guarantee because we must be given the opportunity to be a farmer just like it is defined in the laws of Dane County and the state of Wisconsin. What the constitution guarantees is the pursuit of happiness, the zoning law districts preserve that truth to be self-evident, if a person wants to take a 20,000 square foot property to build his farm on, Dane County and The State of Wisconsin are in business to help them, and it starts with zoning.

## **SIZE MATTERS IN WISCONSIN**

The specific 20,000 square foot lot size requirement of the ordinance FP-B, in a Farm preservation district, with state certified agricultural zoning, tells us two things, one DATCP and the Wisconsin Farm Preservation act chapter 91, allows any citizen in the state of Wisconsin who lives in a farm preservation district the right to participate in these specific agricultural zoning districts, without discrimination on size of at least 20,000 square feet, for the permitted use by right zoning, and secondly because Dane County zoning has certified this specific 10.223 FP-B zoning district to the state of Wisconsin, in exchange for financial benefits, every citizen in a farm preservation district is allowed this zoning specific zoning classification, if the requirements of the ordinance are met. Simply put, because we live in Town of Cottage Grove farm preservation district, comprehensive plan, and the Dane county has agreed to participate in this program, we are by geographical location, size of property, and history of the property to be allowed to right to equally apply for and participate in 10.223 FP-B zoning district.

## **FP-B (Farmland Preservation – Business) Zoning District**

Purpose. (1)

The FP-B Farmland Preservation-Business District is designed to:

**(a)** Provide for a wide range of agriculture, agricultural accessory and agriculture-related uses, at various scales with the minimum lot area necessary to accommodate the use. The FP-B district accommodates uses which are commercial or industrial in nature; are associated with agricultural production; require a rural location due to extensive land area needs or proximity of agricultural resources; and do not require urban services.

**The property and Barn, has been in continuous agricultural use! In the 1950s, the existing original barn was featured in a book called Farms of Dane County!**



**HANN, BERT  
Cottage Grove**

**Sec. 7**

**Rt. 1  
80 acres**



**This is a picture of the property with the barn and property shows what the property looked like in 2011 when the Willans purchased it and filed with the Town of Cottage Grove a legal lawful building permit application to start renovating the barn that was zoned AG-1EX in the Town of Cottage Grove Farm Preservation district.**



**Here is the current house taken on November 2, 2021**



**Here is the current barn taken on November 2, 2021. You can see the restoration transformation has kept the original old barn in the first photo above, and put a new fresh coat of metal on to preserve its agricultural beauty and charm for years to come.**

# THE ZONING QUALIFICATIONS OF FP-B ZONING COMPARED TO THE WILLANS PROPERTY

## 10.223 FP-B (FARMLAND PRESERVATION - BUSINESS) ZONING DISTRICT

1. In appearance and operation permitted uses in the FP-B district are often indistinguishable from a farm. As the respective boards can see in the photos above, that the property has remained indistinguishable from any other farm in the town, and it pretty much looks the same as the 1950s picture. We took down a bunch of old rotted trees around the barn area and cleaned the lot up for the betterment of the community. The property has been highly praised by multiple residents who we meet and when they learn we are the owners of the property at the corner of BB and Vilas Hope rd. Everyone says, “you’ve done a fantastic job cleaning up the property” and “you guys are the guys with the protest signs in your yard”! We do get a laugh out of it, because we never thought the public would remember something from 5 years ago. We are good people, neighbors, friends and citizens of Dane County. I never understood why Dane County zoning was so hell bent on stopping us from using our property for agricultural uses. You will have to ask Roger Lane, Todd Violante, and Mr. Parisi why, Julia and I don’t get it?

2. **CONDITIONAL USE;** We are not applying for any Conditional uses at this time with the rezone but the permitted uses by right involve the use of our historical agricultural barn that require its current location because it was built in a remote location distant from incompatible uses, proximity to agricultural products or suppliers and/or access to utility services or major transportation infrastructure. The property is equipped with 600 amp electric service with separate electrical meters for the barn and residence installed in 2014.

3. Examples of activities in the FP-B district may include, but are not limited to, agricultural support services, value-added, or related businesses such as implement dealers; veterinary clinics; farm machinery repair shops; agricultural supply sales, marketing, storage, and distribution centers; plant and tree nurseries; and facilities for the processing of natural agricultural products or by-products, including fruits, vegetables, silage, or animal proteins. Such activities are characterized by:

- a. Wholesale or retail sales, and outdoor storage/display of agriculture-related equipment, inputs, and products;
- b. Parking areas, outdoor lighting, and signage appropriate to the scale of use;
- c. Small, medium, or large utilitarian structures/facilities/workshops, appropriate to the scale of use;
- d. Low to moderate traffic volumes;
- e. Noises, odors, dust, or other potential nuisances associated with agriculture-related production or processing.
- f. Meet the requirements for certification as a Farmland Preservation Zoning District under s. 91.38, Wis. Stats.

Our property meets and beats all these standards in the ordinance and must be considered in the board’s decision to grant the petition for rezone to the FP-B zoning district to use the property within the permitted rights listed below. We have no desire at this time to use the property for conditional uses listed under this zoning district. If

we decide to use the property for a use listed under the conditional uses of the ordinance district, we will contact Dane County zoning and the Town of Cottage Grove to obtain necessary permitting and approval.

FP-B district Permitted uses by right. (2)

**(a) Agricultural uses.** Our uses will be legally consistent with the defined uses of Chapter 10 DCO and chapter 91 Wisconsin Stats. The property was zoned AG-1EX when the willans purchased the property in 2011, and filed their building permit application with the Town of Cottage Grove on June 4, 2012, and this was a permitted use by right both in AG-1EX and AG-2

**(b) Agricultural Accessory Uses,** except those uses listed as conditional uses and subject to the limitations and standards below. The property was zoned AG-1EX when the Willans purchased the property in 2011 and filed their building permit application with the Town of Cottage Grove on June 4, 2012, and this was a permitted use by right both in AG-1EX and AG-2 Our continued uses will be consistent with the defined by uses of Chapter 10 DCO and chapter 91 Wisconsin Stats.

1. Any residence lawfully existing as of February 20,2010, provided all of the following criteria are met: The residence located on the property was built by CJ Vale in the early 1970s and has been used for agricultural residential use ever since and our family will continue to live on the property.

a. the use remains residential, Our family lives here and are no plans to change the usage of the residence.

b. the structure complies with all building height, setback, side yard and rear yard standards of this ordinance; and the residence and the Barn complies with every requirement listed above.

c. for replacement residences, the structure must be located within 100 feet of the original residence, unless site-specific limitations or town residential siting standards in town plans adopted by the county board require a greater distance. Proposals for a replacement residence that would exceed the 100 foot limitation must be approved by the relevant town board and county zoning committee. Does not apply

2. Agricultural entertainment activities or special events under 10 days per calendar year in the aggregate, including incidental preparation and sale of beverages and food. There are no current scheduled plans for this permitted use by right currently. We will clearly check with our Town and County zoning departments to discuss should we decide to exercise this permitted use by right option.

3. Farm related exhibitions, sales or events such as auctions, dairy breakfasts, exhibitions of farm machinery and technology, agricultural association meetings and similar activities occurring on no more than ten days in a calendar year. There are no current scheduled plans for this permitted use by right currently. We will clearly check with our Town and County zoning departments to discuss should we decide to exercise this permitted use by right option.

4. The seasonal storage of recreational equipment and motor vehicles owned by private individuals other than those residing on the premises, such storage to be in accessory farm buildings existing as of January 1, 2010. The storage of a dealer's inventory or the construction of any new buildings for storage is prohibited. There are no current scheduled plans for this permitted use by right currently. We will clearly check with

our Town and County zoning departments to discuss should we decide to exercise this permitted use by right option.

5. Residential accessory buildings, home occupations, foster care for less than 5 children community living arrangements for less than 9 people or incidental room rental associated with a farm residence approved by conditional use permit. There are no current scheduled plans for this permitted use by right currently. We will clearly check with our Town and County zoning departments to discuss should we decide to exercise this permitted use by right option.

6. Sales of agricultural products produced on the farm. There are no current scheduled plans for this permitted use by right currently. We will clearly check with our Town and County zoning departments to discuss should we decide to exercise this permitted use by right option.

7. Large animal boarding. There are no current scheduled plans for this permitted use by right currently. We will clearly check with our Town and County zoning departments to discuss should we decide to exercise this permitted use by right option.

(c) Agriculture-related uses, except uses listed as conditional uses below, consistent with the purpose statement for the FP-B district. There are no current scheduled plans for this permitted use by right currently. We will clearly check with our Town and County zoning departments to discuss should we decide to exercise this permitted use by right option.

(d) Undeveloped natural resources and open space areas We already have open green space throughout the property already and they shall remain consistent use with definitions under chapter 10 and chapter 91 Wisconsin Stat.

(e) Utility services associated with a farm or a permitted agricultural accessory use. There are no current scheduled plans for this permitted use by right currently. We will clearly check with our Town and County zoning departments to discuss should we decide to exercise this permitted use by right option.

(f) A transportation, utility, communication, or other use that is:

1. required under state or federal law to be located in a specific place, or;

2. is authorized to be located in a specific place under a state or federal law that specifically preempts the requirement of a conditional use permit. There are no current scheduled plans for this permitted use by right currently. We will clearly check with our Town and County zoning departments to discuss should we decide to exercise this permitted use by right option.

*Conditional uses. (3)*

There are no current scheduled plans for conditional uses currently. We will clearly check with our Town and County zoning departments to discuss should we decide to exercise a specific conditional use and work with both Dane County zoning and the Town to obtain a legal lawful conditional use permit should the need arise, and if we cannot obtain a conditional use permit we will not use the property for that conditional use until we obtain such permit..

(4) Lot size requirements.

(a) Minimum lot size. All lots created in the FP-B zoning district must be at least 20,000 square feet in area, excluding public rights-of-way. There are 43,560 square feet in an acre,

so the Willans property qualifies because it has over 4 times the minimum lot size. The significance of this requirement, defines agricultural properties in a farm preservation district aren't just metes and bounds, but the State of Wisconsin has said that agricultural properties are ½ acre lots!

(b) Maximum lot size. None. N/A

(c) Minimum lot width. All lots created in the FP-B zoning district must have a minimum lot width of 100 feet. **If you look at the certified survey map the property at its shortest point is 188 feet wide and 363 feet long**

(5) Setbacks. (a) Front yard. Any permitted structure must comply with road setbacks as described in s. 10.102(9). **The residence and all buildings on the property are within the lawful setbacks as prescribed by s. 10.102(9)**

(b) Side yards. Any permitted structures must be set back from side property lines as follows:

1. Principal residential buildings must be at least 10 feet from any side lot line and a total of at least 25 feet from both side lot lines. **The residence is significantly within these minimum standards**

2. Structures housing livestock must be at least: a. 100 feet from the side lot line of any parcel in any of the Residential or Hamlet zoning districts, b. 50 feet from the side lot line of any parcel in any of the Rural Residential zoning districts, or c. At least 10 feet from any other side lot line. **There are no structures presently housing livestock**

3. Accessory buildings not housing livestock must be at least 10 feet from any side lot line.

(c) Rear yard. Any permitted structures must be set back from rear property lines as follows:

1. Principal residential buildings must be at least 50 feet from the rear lot line. **The existing residence is 110' from the lot line**

2. Uncovered decks or porches attached to a principal residence must be at least 38 feet from the rear lot line. **The existing decks are over 100' from the rear property line**

3. Structures housing livestock must be at least: a. 100 feet from the rear lot line of any parcel in any of the Residential or Hamlet zoning districts, b. 50 feet from the rear lot line of any parcel in any of the Rural Residential zoning districts, or c. 10 feet from any other rear lot line. **There are no structures housing live stock**

4. Accessory buildings not housing livestock must be at least 10 feet from any rear lot line. **All existing structures are over the minimum 10' requirement**

(6) Building height. (a) Residential buildings.

1. Principal residential buildings shall not exceed a height of two and a half stories or 35 feet. **The existing residence is only 2 stories**

2. Residential accessory buildings shall not exceed a height of 35 feet. **There are no accessory buildings over 35'**

(b) Agricultural buildings. There is no limitation on height for agricultural buildings. **The existing barn meets this requirement.**

(7) Lot coverage. There is no limitation on lot coverage in the FP-B district. **This is not an issue**

(8) Other restrictions on buildings. (a) Accessory buildings. 1. There is no limitation on the number of accessory buildings in the FP-35 district. **qualifies**

2. Accessory buildings may be constructed on property without a principal residence only if it is clearly related to a legitimate agricultural or agricultural accessory use. **Not applicable because everything is existing**

3. Sanitary fixtures are permitted in agricultural accessory buildings, however accessory buildings may not be used as living space. **There are no sanitary fixtures currently in the barn, and there is no plan for one without a new septic and permits obtained,**

[History: 10.223 cr., 2018 OA-20, pub. 01/29/19.]

The ordinance language above comes from Comprehensive Revision of Dane County Zoning Ordinance (Ch. 10, Dane County Code) AS ADOPTED BY THE DANE COUNTY BOARD OF SUPERVISORS JANUARY 17, 2019 (PUBLISHED 1/22/2019)

## **SUMMARY OF THE FACTS**

The zoning decision in this case requires that the Board examine our specific piece of land and the proposed permitted by right activities of a particular property owner. It must engage in fact-finding and then make a decision based on the application of those facts to the ordinance. In this case, where the established criteria, direct the Board's fact-finding and decision-making, the Willans should expect that a decision will be made on the basis of the facts and the law. If a Board member prejudices the facts or the application of the law, then Willans's right to an impartial decision-maker is violated.

Again, zoning is a matter of legislative discretion, The term "discretion" contemplates an exercise of judgment based on three factors: (1) the facts of record, (2) logic, and (3) the application of proper legal standards.

The factors to be weighed in considering the validity and reasonableness of rezoning are several. The pertinent inquiries go to whether the rezoning is consistent with long-range planning and based upon considerations which affect the whole community. The nature and character of the parcel, the use of the surrounding land and the overall scheme or zoning plan are also relevant. Finally, the interests of

public health, morals and safety must also be considered, as well as the promotion of public welfare, convenience and general prosperity.

The Wisconsin law during review, has consistently resolved all ambiguity in the meaning of zoning terms in favor of the free use of private property. Zoning ordinances are in derogation of the common law and, hence, are to be construed in favor of the free use of private property. Rathkopf, 1 The Law of Zoning and Planning (4th ed.), The provisions of a zoning ordinance, to operate in derogation of the common law, must be in clear, unambiguous, and peremptory terms.

For the purposes of this Boards inquiry, The FP-B zoning permitted by right use requested is clear, therefore the extent of your powers as it applies to this specific rezoning request, is to look at the Towns comprehensive plan to see if the property applies, look at the language of the ordinance itself, which defines the right for the Willans to use the property, for the defined permitted by right uses of the FP-B ordinance as applied to the property, For the reasons in our petition to rezone, we ask the board to grant our request for a rezone from RR-2 to FP-B zoning district.

RESPECTFULLY SUBMITTED:

/s/ Thomas M Willan /s/ Julia A Willan

---

PRO SE Petitioners Thomas M Willan and Julia A Willan