

BEFORE THE DANE COUNTY BOARD OF ADJUSTMENT

Appeal of Paul Morrison, 1239 Fish Hatchery Road, Oregon, Wisconsin regarding the property located at 7741 State Highway 69 in the Town of Montrose

Appeal No. 3684

BRIEF OF DANE COUNTY ZONING ADMINISTRATOR

Richard and George Gardipee own the property located at 7741 State Highway 69 in the Town of Montrose. At the beginning of the year, the Gardipees' place the property on the market for sale. Dane County Zoning Division received numerous inquiries regarding the legality of having three residences on one property. County Staff researched the property, determined the legality of the residences, and provided that information in a written letter to landowner and their realtor. See Klinkner letter dated February 10, 2017, **Exhibit A**. The letter describes that one of the residences is a valid principal building, the second residence is a secondary non-conforming building, and the third residence was an illegal land use. Dane County Zoning did not receive any objections of the contents of the letter from the Gardipees' or by their realtor.

A prospective buyer, Paul Morrison, is appealing the contents of the letter claiming that both residences on the property should be viewed as valid residences in the A-1 Exclusive Agriculture Zoning District, each having ability to be added to, altered, moved, restored, or repaired.

Timeliness of appeal

The letter in question was sent to Richard and George Gardipee on February 10, 2017. Dane County Zoning Division did not receive any objections to the content of the letter by the current landowner or realtor representing the Gardipees'. However, an appeal was received from an outside third party over 2 months after the letter was sent.

Under Dane County Code of Ordinance Section 10.26(3), appeals shall be taken within a reasonable time, as provided by the rules of the Board. Under the Dane County Board of Adjustment Rules and Procedures, Section 4a, "appeals of administrative decisions shall be filed within 30 days after the date of receipt of a written decision." **See Exhibit B**. The appeal appears to exceed this limitation.

The second issue is standing. Does an outside third party, not having actual interest in the property or proof that he is acting on the property owners' behalf, have the ability to appeal a decision that is directly affecting a specific property not owned by the appellant?

Prior to the hearing of the appeal, I would request that the Board of Adjustment make a determination on whether the appeal is timely and if an appeal can be made by a person not directly having ownership in the property.

Explanation of Determination

In 1986, Richard and George Gardipee operated a fish farm on the property located at 7741 State Highway 69. At the time, there was an existing residence and several subordinate accessory buildings. The Gardipees' obtained a zoning permit to convert an accessory building into a secondary farm residence for the main purpose of housing a farm employee in conjunction with the farm operation. **See Exhibit C.** Under the 1986 Zoning Code, landowners located within the A-1 Exclusive Agriculture Zoning District were only permitted to construct farm residences on the property for occupants earning a substantial part of his or her livelihood from the sales of products produced on the farm. **See Exhibit D.** In other words, houses for farm owners and ranch hands. Single-family residences not occupied by farmers were prohibited in the A-1 Exclusive Agriculture Zoning District. Single-family dwellings were not listed as a permitted use or a conditional use in 1986 under the A-1 Exclusive Zoning District, thus making them prohibited in the district.

In the mid to late 90's, the fish farm was discontinued. See attached aerial photos, **Exhibit E.** Due to the farm operation terminating, the residences not longer were used as farm residences. After 12 months, the farm residences lost farm residence status. The single-family dwellings on the property became non-conforming uses. Under DCCO 10.21(1)(b) Non-conforming uses may continue to be used and maintained as non-conforming uses as long as they do not expand or increase in intensity. **See Exhibit F.**

In order to determine the legality of the dwellings on the property, various sections of the ordinance were used. First, the most general principal what applied. Under DCCO 10.04(1)(a), "There shall be no more than one principal building on the lot except listed below:". Since there is no farm operation, no exceptions apply to this property. The existing dwelling which was constructed prior to the ordinance was determined to be the principal building. All other buildings on the property would be considered accessory buildings.

10.04 RESTRICTIONS UPON LANDS, BUILDINGS AND STRUCTURES. Except as otherwise herein provided: **(1)(a) Principal buildings.** There shall not be more than one (1) principal building on a lot except as listed below:

1. On lots in the commercial, industrial and business districts, more than one (1) building is permitted for any single business or commercial enterprise or for any combination of businesses or commercial enterprises.
2. On land in the A-1 exclusive agriculture district, secondary farm residences and single family dwellings or mobile homes occupied by parents or children of the farm operator are conditional uses as provided in s. 10.123 of this ordinance.

The next step in the process was to apply the sections found under DCCO 10.21, non-conforming uses. The beginning of the non-conforming section identifies if the non-conforming use discontinues for a period of more than 12 months, the non-conforming use is terminated. Given that the farm operation terminated several years back, the farm residences provision no longer applies to the dwellings on the property. The single-family dwellings on the property must comply with the provisions of the ordinances.

10.21 NONCONFORMING USES. (1)(a) The lawful use of a building or premises existing at the time of adoption of this ordinance may be continued as a nonconforming use, but if such nonconforming use shall be discontinued for a period of one (1) year, such nonconforming use will be deemed to have terminated and any future use shall be in conformity to the provisions of this ordinance except as otherwise provided by this ordinance.

The non-conforming section further limits the use of a non-conforming activity by only applying non-conforming status to the principal use. Under DCCO 10.21(4), only the principal use shall be considered a valid nonconforming use. With the absence of a farm operation, the current use of the property could be only one single-family residence, given the general rule of “one principal building permit lot as noted in section 10.04. The secondary residence on the property cannot be viewed as a valid non-conforming use.

10.21 NONCONFORMING USES. (4) No use which is not the principal use of the land on which it is located shall be considered a valid nonconforming use.

The question now arises about the status of the secondary residence. It is viewed as an invalid use. However, the structure is still being occupied as a residence. Being an invalid non-conforming use places severe limitations on the building. The structure may not be added to or altered as noted for a general non-conforming use. However, if the structure is unoccupied by more than 12 months, the use is deemed abandoned and the structure would not longer have the ability to be used as a residence.

As for the status of the residence that was constructed prior to the ordinance, this residence was determined to be the principal use of the property now and would be considered a valid non-conforming use. Under DCCO 10.123(2)(b)1., provisions have been made for valid residences that no longer are part of an active farm.

10.123 A-1 EXCLUSIVE AGRICULTURE [A-1(EX)] DISTRICT.

(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. Notwithstanding the provisions of secs. 10.21 and 10.23 regarding nonconforming uses, such structure may be added to, altered, restored, repaired, replaced or reconstructed, without limitation, provided all of the following criteria are met:

a. the use remains residential, b. the structure complies with all building height, setback, side yard and rear yard standards of this ordinance; and 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.

This section would not apply to the secondary residence due to the fact that the secondary residence no longer can be viewed as a principal use and is not considered a valid non-conforming use.

Supporting Ordinances

Currently, the property is zoned A-1Exclusive Agriculture. The purpose of this district is to promote and preserve agricultural production. The purpose does not mention residences as found in other zoning districts. In fact, the district strongly discourages the placement of single-family dwellings in the district. A residence may only be constructed within this district if it is part of an active farm operation and houses the farm family or worker. Allowing the proliferation of multiple residential dwellings within the A-1Exclusive Agriculture Zoning District appears to conflict with the intent of this district.

10.123 A-1 EXCLUSIVE AGRICULTURE [A-1(EX)] DISTRICT. (intro.) This district is in effect in those towns which make the election under sub. (1)(c) below.

(1) Purpose and applicability. (a) State of purpose. The A-1 Exclusive Agriculture District is designed to:

1. Provide for a wide range of agriculture and agricultural accessory uses, at various scales. The A-1(EX) district accommodates as permitted uses all activities typically associated with the primary production and harvesting of crops, livestock, animal products or plant materials. Such uses may involve noise, dust, odors, heavy equipment, use of chemicals and long hours of operation.
2. Allow for incidental processing, packaging, storage, transportation, distribution or other activities intended to add value to agricultural products produced on the premises or to ready such products for market. Such uses are conditional as they may have the potential to pose conflicts with agricultural use due to: volumes or speed of vehicular traffic; residential density; proximity to incompatible uses; environmental impacts; or consumption of agriculturally productive lands.

Summary

Zoning Inspector Klinkner's letter correctly identifies the limitations of the existing buildings on the property. The principal building known as the original farm home, is allowed to be added to, altered or restored under the provision of Dane County Code of Ordinances 10.123(2)(b)1. The log cabin or second structure, may not be expanded due to the building not being the principal use and cannot be considered a valid non-conforming use under 10.21(4). With the absence of a legitimate farm operation, the limitations of the dwellings appear to be in tune with the purpose of the A-1 Exclusive Agriculture Zoning District. If the second residence is desired to be improved, the area should be rezoned off the A-1 Ex Exclusive Agriculture and placed in a district suitable for residential dwellings.

Finding of Fact

I respectfully request that the Dane County Board of Adjustment make the following Findings of Fact:

1. The property located a 7743 State Highway 69 is currently zoned A-1 Exclusive Agriculture.
2. The property does not have an active farm operation run by the landowner. The fish farm operation eased prior to February 20, 2009.
3. DCCO 10.04(1)(a) allows only one principal building on a property in the absence of a legitimate farm operation described under 10.123.
4. DCCO 10.21(4) states that no use which is not the principal use of the land on which it is located shall be considered a valid nonconforming use.
5. There are two existing residences on the property, one considered a principal use and one considered an invalid non-conforming use.

Conclusion

With the aforementioned evidence, I respectfully request that the Dane County Board of Adjustment make the following conclusion:

1. The contents of Mr. Klinkner's letter dated February 10, 2017 are in accordance with Dane County Code of Ordinances.
2. The principal building on the property, identified as the most westerly residence, is considered a lawful existing residence as found under Dane County Code of Ordinances Section 10.123(2)(b)1.
3. The secondary residence, identified as the Log Cabin, is considered an invalid non-conforming use. The building shall not be expanded or replaced unless the property is brought into conformance with the current zoning ordinances.



Dane County Planning & Development

Division of Zoning

February 10, 2017

Richard and George Gardipee
7741 State Highway 69
Belleville, WI 53508

Re: 7741 and 7743 State Highway 69, Belleville, WI 53508
Parcel # 040/0508-314-9000-7

Dear Richard and George,

It has been brought to my attention that your property at 7741 State Highway 69 has three separate residences. During the sale of this property that you're currently undergoing, our office has received numerous phone calls questioning the legality of having three homes on one property. Per Dane County Code of Ordinance (DCCO) No. 10.04(1)(a) Principal buildings. There shall not be more than one (1) principal building on a lot.

Searching old zoning records, it appears construction of the older original home predates any zoning records. It is considered the primary building on this property. The contemporary home (log cabin) was originally permitted as a storage building for personal belongings on July 27, 1984, then converted to a secondary farm residence on March 26, 1986. Your property maintained a fish farm at one time which was the rationale for having a secondary farm residence. The third residence on your property is a one story cottage. It appears that it was permitted for a storage building on September 6, 1979.

The Town of Montrose has acknowledged through its assessment roll that three homes exist. Although the property is zoned A-1 Exclusive Agriculture District and only a single principal building is permitted, Dane County Zoning recognizes that three separate principal buildings have existed on this property for more than 25 years and has enjoyed a legal, nonconforming status. According to the Dane County Code of Ordinance, # 10.21 (1)(a) Nonconforming Uses. "The lawful use of a building or premises existing at the time of adoption of this ordinance may be continued as a nonconforming use, but if such nonconforming use shall be discontinued for a period of one (1) year, such nonconforming use will be deemed to have terminated and any future use shall be in conformity to the provisions of this ordinance except as otherwise provide by this ordinance." (b) "No building or premises used as a nonconforming use shall be added to or structurally altered so as to increase the facilities for such nonconforming use."

Therefore, you have what you have, no additions and/or changes can be made to the log cabin and cottage. The original farm home is conforming and may be allowed improvements.

If you have any questions, please feel free to call me.

Sincerely,

Patrick M. Klinkner
Dane County Zoning Inspector
608-266-9082

CC: Julie Bigler, Town of Montrose Clerk
Patrick Downing, Dane County Supervisor, District 30
Roger Lane, Dane County Zoning Administrator

EXHIBIT A

4. VARIANCES, APPEALS AND APPLICATIONS

a) Appeals of administrative decisions shall be filed within 30 days after the date of receipt of a written decision or order from which the appeal is taken by filing a notice of appeal with the Zoning Administrator or the Chair of the Board. The date of receipt by the appellant of the decision, order, requirement or interpretation of the Zoning Administrator or other administrative officer shall be confirmed by the date of the appellant's or other accepting party's signature on a U.S. Postal Service Certified Mail Return Receipt, if any, or by notarized statement of the appellant submitted with the appeal. The date of receipt of the decision shall not be counted in determining the time for filing of the appeal. Sundays and holidays shall be counted, except if the last day falls on a Saturday, Sunday or

legal holiday, the time for filing shall be extended to the next secular day. Failure to meet the time deadline is jurisdictional and the matter will be dismissed on that basis.

b) An application for a variance shall be made upon forms furnished by the Zoning Division which have been approved by the Board. The applicant or appellant shall provide all information requested on the form, along with any additional information requested by the Chair, or by Staff with approval of the Chair, that is necessary to inform the Board of the facts of the case. If requested in writing by the applicant, the Chair or Staff shall provide a written list of additional information required. Any variance application that does not substantially comply with the above requirements, as determined by Staff with approval of the Chair, or by the Board, or is in any manner incomplete, may be postponed. Failure to supply such required information may be grounds for dismissal of the application.

c) Any additional information pertaining to a variance shall be submitted a minimum of three (3) weeks prior to the date of the hearing. Applicants wishing to submit information after that date may do so at the Chair's discretion before the hearing or at the time of the hearing.

d) An appeal of an administrative decision shall be made in writing to the Board of Adjustment in care of the Zoning Division. The letter shall state the date on which the decision was made, date the appellant received the decision, the name and position of the administrative officer, a description of the project regarding which the decision was made, the specific sections of the Code of Ordinances cited by the administrative officer, and the reason(s) why the person is aggrieved by the decision. A copy of the written decision of the administrative officer shall accompany the written appeal.

e) Any additional information or briefs prepared by parties of interest in an appeal of an administrative decision or other contested case shall be submitted a minimum of three (3) weeks prior to the date of the hearing. Applicants wishing to submit information after that date may do so at the Chair's discretion before the hearing or at the time of the hearing. Each party shall supply copies for members of the Board, the Zoning Administrator, Staff, Dane County Corporation Counsel, the Town and all other parties submitting briefs. The information submitted shall be distributed by Staff.

f) Contested cases. The appeal of an administrative decision shall be a contested case. All parties involved shall be provided written notice explaining that a contested case includes the right of all parties to cross-examine witnesses, to object to improper evidence, and to have a record of the proceedings made at the appellant's expense by a court reporter or qualified stenographer. A copy of the electronic recording made by the Zoning Division may be obtained at cost.

g) Fees. All applications and appeals filed shall be accompanied by cash or a check for the appropriate amount as noted in Chapter 12, Zoning Fees, Dane County Code of Ordinances.

EXHIBIT B

Dane County Zoning Permit Application

PERMIT NO. **Nº 37756**

LOCATION: 7743 STH 69		TOWN: MONTROSE		SECTION: 31		ZONE: SE 1/4	
NUMBER: 15+ AC Parcel Part of		SUBDIVISION NAME OR C. S. M. NUMBER: 20-31-698.01		C.U.P. NO.		ZONE: A-1 (EX)	
ROAD: A		PROPOSED USE: DOCU. # 1926854		CLASS: A		WIDTH: 116 ± So SIDE	
TYPE OF IMPROVEMENT:		<input type="checkbox"/> 101 ONE F <input type="checkbox"/> 102 TWO F <input type="checkbox"/> 104 THREE <input type="checkbox"/> 105 FIVE <input type="checkbox"/> 213 HOTEL <input type="checkbox"/> 318 AMUSEMENT/RECREATIONAL BLDG. <input type="checkbox"/> 319 CHURCHES/RELIGIOUS BUILDING <input type="checkbox"/> 320 INDUSTRIAL BUILDINGS <input type="checkbox"/> 322 SERVICE STATION/REPAIR GARAGE <input type="checkbox"/> 323 HOSPITAL/INSTITUTIONAL		<input checked="" type="checkbox"/> 329 STRUCTURES OTHER THAN BUILDINGS <input checked="" type="checkbox"/> 434 ADDN./ALT. HOUSEKEEPING BUILDINGS <input type="checkbox"/> 436 RESIDENTIAL GARAGES/CARPORTS <input type="checkbox"/> 437 ADDN./ALT. NON-RESIDENTIAL BUILDINGS <input type="checkbox"/> OTHER (NOT INCLUDING ABOVE)		*** IONAL *** ES *** L *** AL BUILDINGS	
<input type="checkbox"/> NEW BUILDING <input type="checkbox"/> ADDITION <input checked="" type="checkbox"/> ALTERATION <input type="checkbox"/> REPAIR/REPLACEMENT <input type="checkbox"/> MOVING/RELOCATION		SEE SITE PLAN REEL #10					
TYPE OF FRAME:		PROPOSED USE: (If non-residential, describe in detail).					
<input checked="" type="checkbox"/> WOOD FRAME <input type="checkbox"/> MASONRY (WALL BEARING) <input type="checkbox"/> STRUCTURAL STEEL <input type="checkbox"/> REINFORCED CONCRETE <input type="checkbox"/> OTHER		CONVERT FARM BLDG TO RES.					
SEWAGE DISPOSAL:		OWNER:					
<input type="checkbox"/> PUBLIC <input checked="" type="checkbox"/> PRIVATE		GEORGE GARDIPPE					
PERMIT NO. 86-0040		7741 STH 69					
DIMENSIONS:		BRULEVILLE WI 53508					
LONG 30 WIDE 30		CONTRACTOR:					
STORIES 2 FEET		SAME					
TOTAL FLOOR AREA		The undersigned and the owner of this building agree to conform to all applicable ordinances of Dane County. The dimensions and location of the proposed construction shall be as shown on the attached site plan.					
TOTAL LOT AREA		<input checked="" type="checkbox"/> George Gardippe Signature of owner or his agent.					
PARKING SPACES:		Date					
REQUIRED		INSPECTION RECORD:					
FURNISHED		FRONT YARD _____ RIGHT YARD _____ LEFT YARD _____ REAR YARD _____					
SHORELAND/FLOOD PLAIN:		DATE _____ BY _____ CERTIFICATE ISSUED _____ BY _____					
PERMIT NO.		NOTATION:					
VARIANCE:		EXISTING DRIVEWAY					
PERMIT NO.		CONVERSION OF FMT #36391					
DWELLING UNITS (003-004)		RIS TO BE OCCUPIED BY FARM EMPLOYER					
1 BEDROOM		AREA:					
2 BEDROOM		BASEMENT _____ FIRST _____ SECOND _____ TOTAL _____					
3 BEDROOM		COST: 18000 FEE: 43.00					
TOTAL		ISSUED BY St. Remond DATE 3-26-86					

545-24 (11/85)

EXHIBIT C

10.02
10.03
10.04

- A-1 Agriculture District (Exclusive).
- A-B Agriculture-Business District.
- A-2 Agriculture District.
- A-3 Agriculture District.
- C-1 Commercial District.
- C-2 Commercial District.
- LC-1 Limited Commercial District.
- M-1 Industrial District.
- CO-1 Conservancy District.

SECTION 10.03 ZONING DISTRICT MAPS.

- (1) The location and boundaries of the zoning districts other than the A-1 Agriculture District and the flood prone areas (regional flood) are hereby established as shown on maps entitled "Zoning District Maps" on file in the office of the zoning administrator. The A-1 Agricultural District shall consist of all areas not otherwise designated on the "Zoning District Maps." The zoning administrator shall periodically update the "Zoning District Maps" to show any changes in the zoning district boundary lines resulting from amendments to the zoning ordinance, annexations and changes resulting from city or village extraterritorial zoning provisions. The "Zoning District Maps" together with all information shown thereon and all amendments thereto, shall be as much a part of this ordinance as if fully set forth and described herein.

- (2) Location of district boundaries.

The following rules shall apply with respect to the boundaries of the zoning districts as shown on the zoning district maps:

(a) Where zoning district boundary lines are indicated as following streets, highways, roads or alleys or extensions thereof, such boundary lines shall be construed to be the centerlines of said streets or alleys or extensions; thereof unless clearly shown to the contrary.

(b) Where a dimensioned boundary line coincides approximately but not exactly with a lot line which existed on the effective date of incorporation of such boundary line into the zoning map, the said boundary line shall be construed to be the said lot line at that location.

(c) Streets, highways, roads or alleys which are shown on the zoning districts maps and which heretofore have been vacated, or which may be vacated hereafter, shall be in the same zoning district as the lots, pieces, or parcels abutting both sides of the street, highway, road or alley involved. If the lots, pieces or parcels abutting each side of the street, highway, road or alley were located in different zoning districts before the said street or alley was vacated, the centerline of the said vacated street or alley shall be the boundary line of the respective zoning districts.

Where any uncertainty exists as to the exact location of zoning district boundary lines, the board of adjustment, upon written application, shall determine the location of such boundary lines.

SECTION 10.04 RESTRICTIONS UPON LANDS, BUILDINGS AND STRUCTURES.

Except as otherwise herein provided:

- (1) There shall not be more than one (1) principal building on a lot except for lots in the commercial, industrial and business districts. In those districts, more than one (1) building is permitted for any single business or commercial enterprise. In a residence district, more than one (1) accessory building is permitted, however the total floor area of the accessory building or buildings shall not exceed 50 percent (50%) of the floor area of the residence. On lots in the A-1 Agriculture District where the principal use is residential, more than one (1) accessory building is permitted, however the total floor area of the accessory building or buildings shall

EXHIBIT D-1

not exceed that of the residence on the lot. On land in the A-1 Agriculture District used for agricultural purposes, agricultural accessory buildings are permitted but are limited to barns, sheds, silos and the like that are necessary to an agricultural use.

- (2) Height. No building or structure shall be erected, nor shall any existing building or structure be removed, reconditioned, added to or structurally altered to exceed in height the limit established by this ordinance for the district in which that building or structure is located.
- (3) Percentage of lot occupancy. No building or structure shall hereafter be erected, nor shall any existing building be moved, altered, enlarged or rebuilt, nor shall any open spaces surrounding any building or structure be encroached upon or reduced in any manner, nor shall a greater percentage of lot be occupied, except in conformity to the building site requirements and the area and yard regulations established by this ordinance, for the district in which such building is located.
- (4) Density of population. No building, structure or premises shall be erected, occupied or used so as to provide a greater density of population than is allowed by the terms of this ordinance for the district in which such building, structure or premises is located.
- (5) Open space limitations. No yard or other open space provided about any building or structure for the purpose of complying with the regulations of this ordinance shall be considered as providing yard or open space for any other building or structure. No lot area shall be so reduced or diminished that the yard or other space shall be smaller than prescribed by this chapter.

- (8) OFF-STREET PARKING. Off-street parking space shall be provided in accordance with the provisions of Section 10.18.
- (9) APPLICABILITY. This section shall apply to all towns within Dane County, except those which have elected to come under the provisions of Section 10.123 of the Dane County Code of Ordinances, according to the procedure set forth therein.

SECTION 10.121 A-B AGRICULTURE BUSINESS DISTRICT

(1) PERMITTED USES.

- (a) Sales, service and repair of machinery and equipment used in farming.
- (b) Sales, distribution, mixing, blending and storage of feeds, seeds and fertilizer.
- (c) Stock yards, livestock auction barns and yards, livestock and farm commodity trucking services.
- (d) Processing and preserving of natural agricultural products, fruits and vegetables.
- (e) Sales, service and repair of lawn and garden equipment.
- (f) Sales and distribution of nursery stock and plants.
- (g) Residential use for an owner of the business.
- (h) Sales and service of small scale methane generating equipment and alcohol distilling equipment that is designed for use in a farm operation.
- (i) Sales and service of wind driven electrical generating equipment.

(2) BUILDING HEIGHT LIMIT.

- (a) For buildings containing offices, sales rooms and service areas, residential buildings, the maximum height shall be two and one-half (2-1/2) stories or 35 feet.
- (b) For all other buildings such as silos, bins and feed and seed storage facilities, no maximum height.

- (3) AREA AND LOT WIDTH. A lot shall be not less than 100 feet in width at the building setback line and have an area of at least 20,000 square feet.

- (4) DENSITY. Buildings shall not occupy more than sixty percent (60%) of the area of an interior or corner lot.

- (5) SETBACK REQUIREMENTS. Buildings that are erected, altered or moved shall be setback not less than is prescribed in Section 10.17.

- (6) SIDE YARD REQUIREMENTS. Ten (10) feet.

- (7) REAR YARD REQUIREMENTS. Ten (10) feet.

- (8) OFF-STREET PARKING. Off-street parking shall be provided in accordance with Section 10.18.

(This district, Section 10.123 is in effect in the following towns: Albion, Berry, Black Earth, Blooming Grove, Blue Mounds, Christiana, Cottage Grove, Cross Plains, Dane, Deerfield, Dunkirk, Dunn, Madison, Mazomanie, Medina, Montrose, Perry, Pleasant Springs, Roxbury, Rutland, Springfield, Sun Prairie, Vermont, Verona, Vienna, Westport, York).

SECTION 10.123 A-1 AGRICULTURE DISTRICT (EXCLUSIVE)

- (1) STATEMENT OF PURPOSE. The purposes of the A-1 Agriculture District (Exclusive) are to: preserve productive agricultural land for food and fiber production; preserve productive farms by preventing land use conflicts between incompatible uses and controlling public service costs; maintain a viable agricultural base to support agricultural processing and service industries; prevent conflicts between incompatible uses; reduce costs for providing services to scattered nonfarm uses; pace and shape urban growth; implement the provisions of the County Agricultural plan when adopted and periodically revised; and comply with the provisions of the Farmland Preservation Law to permit eligible landowners to receive tax credits under Section 71.09 (11) of the Wisconsin Statutes.
- (2) LANDS TO BE INCLUDED within the A-1 Agriculture District (Exclusive). This district is generally intended to apply to lands in productive farm operations including: lands historically exhibiting good crop yields or capable of such yields; lands which have been demonstrated to be productive for dairying, livestock raising and grazing; other lands

which are integral parts of such farm operations; land used for the production of specialty crops such as mint, sod, fruits and vegetables; and lands which are capable of productive use through economically feasible improvements such as irrigation.

(3) PERMITTED USES

- (a) Agricultural uses.
- (b) Residences to be occupied by a person or a family at least one (1) member of which, earns a substantial part of his or her livelihood from sales of products produced on the farm. Subject to the provisions of Chapter 75, Land Division and Subdivision Ordinances.
- (c) Utility services as defined in Section 10.01 (81) and small scale electric generating stations not requiring approval under Section 196.941 of the Wis. Stats.
- (d) Road side stands.
- (e) Structures and improvements that are consistent with agricultural uses.
- (f) Home occupations as defined in Section 10.01 (25) of this ordinance.
- (g) 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 existing accessory farm buildings. The storage of a dealer's inventory or the construction of any new buildings for storage shall be considered a commercial use and subject to the provisions of this ordinance.

(4) CONDITIONAL USES in the A-1 Agriculture District (Exclusive)

- (a) Single family dwellings or mobile homes occupied by parents or children of the farm operator.
 - (b) Governmental uses.
 - (c) Religious uses.
 - (d) Separation of farm dwellings and related structures which existed prior to the effective date of this ordinance and which remain after farm consolidation.
1. Standards applicable to conditional uses in the A-1 Agriculture District (Exclusive). The Department of Agriculture, Trade and Consumer Protection shall be notified of the approval of any conditional use permit. In passing applications for conditional use permits the Committee shall consider the following relevant factors:
- A. The statement of purposes of the Zoning Ordinance and the A-1 District.
 - B. The potential for conflict with agricultural use.
 - C. The need of the proposed use for a location in an agricultural area.
 - D. The availability of alternative locations.
 - E. Compatibility with existing or permitted use on adjacent lands.
 - F. The productivity of the lands involved.
 - G. The location of the proposed use so as to reduce to a minimum the amount of productive agricultural land converted.
 - H. The need for public services created by the proposed use.
 - I. The availability of adequate public services and the ability of affected local units of government to provide them without an unreasonable burden.
 - J. The effect of the proposed use on water or air pollution, soil erosion and rare or irreplaceable natural resources.

EXHIBIT D-4

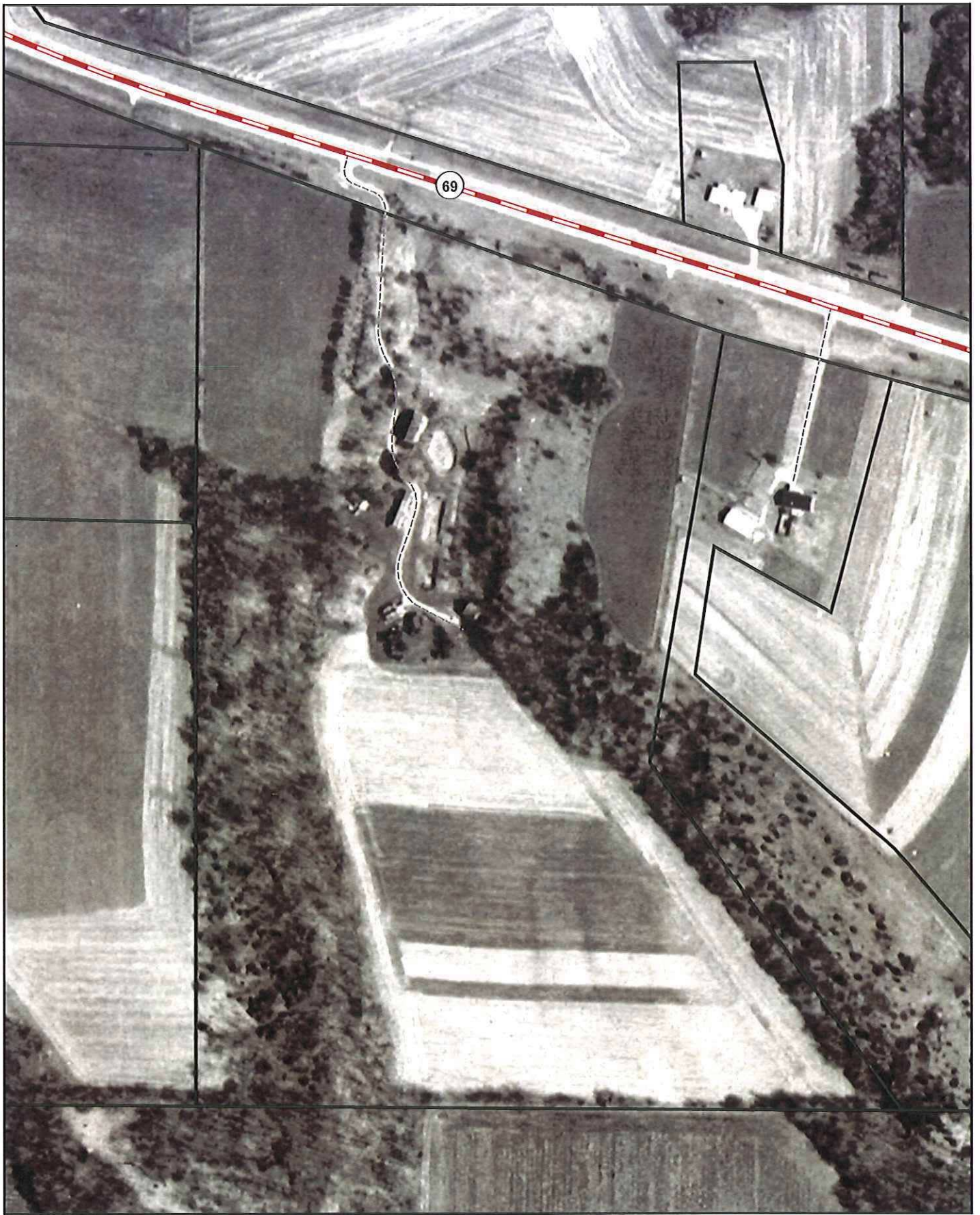
1986 ZONING CODE



0 150 300 600 Feet

EXHIBIT B-1

1987 photo
Gardipee Farm



0 150 300 600 Feet

EXHIBIT E-2

1995 photo
Gardipee Farm



0 150 300 600 Feet

EXHIBIT

E-3

2014 photo
Gardipee Farm

10.21 NONCONFORMING USES.

(1)

(a) The lawful use of a building or premises existing at the time of adoption of this ordinance may be continued as a nonconforming use, but if such nonconforming use shall be discontinued for a period of one (1) year, such nonconforming use will be deemed to have terminated and any future use shall be in conformity to the provisions of this ordinance except as otherwise provided by this ordinance.

(b) No building or premises used as a nonconforming use shall be added to or structurally altered so as to increase the facilities for such nonconforming use.

(c) Mineral extraction operations which existed prior to 1969 and were registered with and approved by the Dane County Zoning Administrator shall be considered nonconforming uses.

(d) Mineral extraction sites that were registered as nonconforming sites as provided by this ordinance shall not be considered abandoned or discontinued if the site is inactive for more than one year.

(e) The stockpiling and processing of asphalt and concrete pavements for the purpose of recycling for reuse in asphalt or concrete mixtures or as base course products shall be allowed as part of a nonconforming mineral extraction site.

(2) Any building lawfully erected prior to the adoption of this ordinance which does not conform to the requirements of this ordinance as to setback, side yards or rear yards, may be continued in use, but any future additions or structural alterations shall conform to the provisions of this ordinance.

(3) Any existing nonconforming use may be changed to another nonconforming use of a similar or more restricted classification or to a conforming use; provided, however, that when a use has been changed to a conforming use or a more restricted nonconforming use it may not again be changed to a less restricted use.

(4) No use which is not the principal use of the land on which it is located shall be considered a valid nonconforming use.

(5) Any nonconforming use, the location of which is changed to another part of the premises, shall be considered abandoned one (1) year after the locational change and, in any event, any nonconforming use at the new location shall be invalid.

EXHIBIT F