



## Dane County Planning and Development Department

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### Planning

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### Zoning

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### MEMORANDUM

**TO:** Dane County Zoning & Land Regulation Committee (ZLR)  
**FROM:** Todd A. Violante, AICP, Director  
**DATE:** February 3, 2022  
**RE:** Staff Update on Rezone Petition 11788

A great deal of information has been provided by the applicants in support of their petition. A number of the documents provided contain statements and information with which staff disagrees, and on these points, the applicants and staff have 'agreed to disagree.' It is important for the Committee to keep in mind the pertinent facts of the petition, and the following points establish some of the relevant background and set the context for this decision.

1. In 1998, the 2-acre subject property was separated from the original CJ Vale farm under rezoning petition 7341. The lot contained an existing residence and an accessory building. The intent was to create a residential lot and separate the house from the productive farmland. At that time, the intent was to create a 2-acre lot by rezoning it from A-1 Agriculture (Exclusive) to RH-1 Rural Homes.
2. After Mr. and Mrs. Willan purchased the 2-acre lot in 2011 with the understanding that it was zoned RH-1, it was discovered that the zoning of the property was never assigned the intended zoning district classification of RH-1. The initial staff report on rezone 11788 described the situation as follows:

"As part of the approval, a certified survey map and a deed restriction was required to be recorded within a 90-day timeframe. The CSM was recorded, however the deed restriction was not recorded within the timeframe. As a result, the zoning was rendered null and void but the 2-acre lot was established. This created a legal lot of record with substandard zoning. The newly created lot retained the original A-1 Ex. zoning."

After email exchanges with the County Executive in 2013, the Willans requested that the property be assigned the zoning district of RH-1 as originally intended. Mr. Willan willingly submitted a rezoning application and attended the public hearing regarding the rezoning of his property.

3. During the rezoning process, Mr. Willan stated that he intended to run his Ironman Buildings contracting business from the accessory building on the property. Department staff suggested changing the zoning to A-2(2) Agriculture, instead of to RH-1, in order to better accommodate the Willans' Ironman Buildings business. The A-2(2) Zoning District allowed Mr. Willan to operate a 'limited family business' from the accessory building, if a conditional use permit (CUP) was obtained. But A-2(2) also allowed the Willans to run their business out of their residence as a 'home occupation' as a permitted use.
4. The Willans' request to rezone their property was approved. The property was assigned the zoning district classification of A-2(2). In order to accommodate using the accessory building for the Ironman Buildings contracting business, a CUP for a 'limited family business' was needed, but Mr. Willan was reluctant to pursue this option. Since that time, the Willans have been successfully running their business from the residence as a 'home occupation.'
5. In 2018, Dane County went through a Comprehensive Revision to the Dane County Zoning Ordinance. As part of Ordinance Amendment 2018-OA-20, new zoning maps were created in order to label properties with the new zoning district names. A public hearing was held on November 27, 2018 before the Dane County Zoning and Land Regulation Committee regarding the 2018-OA-20. The zoning ordinance revision was approved by the ZLR Committee on December 18<sup>th</sup> and the County Board adopted the new zoning ordinance on January 17, 2019. In addition, public hearings and informational meetings were held at the Town of Cottage Grove regarding the adoption of the new zoning ordinance and associated zoning maps. The Town adopted the new zoning ordinance and map on February 4, 2019.
  - a. It is important to note that during the comprehensive revision of the Zoning Ordinance, it was the intent and consistent practice for all properties countywide to be transferred from districts under the old ordinance to closely matched districts under the new ordinance, and not to expand the intensity or range of uses beyond the existing uses and previous zoning.
  - b. In this case, the zoning of the property at 4407 Vilas Hope Road changed from A-2(2) under the old ordinance to RR-2 in the new ordinance. Both zoning districts allowed for single-family residences and agricultural uses ('small scale farming' in RR-2) to be conducted on the property. Both zoning districts allow for a commercial business (such as Ironman Buildings) to be conducted inside an accessory building as a limited family business if a CUP is obtained, or as a home occupation within the residence as a permitted use.

- c. The current zoning designation of RR-2 allows for all of the existing uses on the property, and it also allows for the Willans to expand their current business into their accessory building with a CUP.
6. The Willans contend that they have an 'agricultural accessory use' on the property by way of their business, Ironman Buildings. They also claim that Zoning Administrator Lane has stated that it is and that the ordinances and statutes support this claim. Staff disagrees with these statements.
  - a. Zoning Administrator Lane does not and has not considered Ironman Buildings to be an agricultural accessory use. Mr. Lane has considered the activity conducted on the property for Ironman Buildings to be a 'home occupation.' The interpretation of the Zoning Administrator is that Ironman Buildings is considered a contracting business. The company constructs buildings off-site for residential, commercial, and agricultural purposes. The business is run from the residence as a home occupation.
  - b. In order to have an 'agricultural accessory use' on the property, the activity has to be conducted on a farm. The Dane County Zoning Ordinance, Section 10.004(13), defines an agricultural accessory use as follows: *"Any of the following land uses on a farm [Emphasis added]: (a) A building, structure, or improvement that is an integral part of, or incidental to, an agricultural use. (b) An activity or business operation that is an integral part of, or incidental to, an agriculture use. (c) Farm residence. (d) A business, activity, or enterprise, whether or not associated with an agricultural use, which is conducted by the owner or operator of a farm, that requires no buildings, structures, or improvements other than those described in par. (a) or (c), that employs no more than 4 full-time employees annually, and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland.*
  - c. There are no agricultural land uses presently on the property that would constitute the property as a farm. A farm is defined in the ordinance as follows: *"All land under common ownership that is primarily devoted to agricultural use. For the purposes of this ordinance, "primarily devoted" means that a majority of the land is in agricultural use. Agricultural use is defined as follows: "Means any of the following activities conducted for the purpose of producing an income or livelihood: (a) Crop or forage production. (b) Keeping livestock. (c) Beekeeping. (d) Nursery, sod, or Christmas tree production. (e) Floriculture. (f) Aquaculture. (g) Fur farming. (h) Forest management. (i) Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program."*

Under these definitions, it is the position of staff that this property is not a farm, does not contain agricultural accessory uses, and that Ironman Buildings specifically is not an agricultural accessory use.

Staff acknowledges that there are factors in favor of this petition: the town of Cottage Grove has approved the petition without conditions; the property is within an agricultural preservation area of the town and county comprehensive plan; and nobody spoke in opposition to the petition at the public hearing. And there may very well be uses allowed within the FP-B district that could be compatible with this site. However, as articulated in the initial staff report on rezone 11788, staff is still concerned with the property located at 4407 Vilas Hope Road being rezoned to the FP-B Farmland Preservation Business zoning district. The proposed FP-B zoning district is intended to accommodate land uses that are commercial or industrial in nature which are associated with agricultural production. It allows intensive land uses. This property is not a farm, so therefore an agricultural accessory use would not be allowed on the property due to the fact that an agricultural accessory use must be part of a farm operation. The applicant has not specified what land uses are proposed for this site. At the January 25, 2022 ZLR public hearing, the applicants indicated that they would like to operate their Ironman Buildings business from the accessory building, which can already be accommodated within the existing zoning district of RR-2 by way of a CUP. If the applicants would like to pursue a CUP for a 'limited family business' in the existing accessory building to operate Ironman Buildings, staff would be more than happy to assist in that process.

Beyond that, without more information or a clear indication of what uses within the FP-B district the applicants wish to pursue, staff simply cannot assess the possible secondary impacts of the requested zoning change on surrounding properties and public rights-of-way, one of which is a county highway, and that the public health, safety, and welfare are secured by this zoning change. Staff is concerned that such factors as adequate ingress and egress, sufficient parking, and compatibility with surrounding existing uses cannot be assured for the full range of allowed land use(s) within the FP-B district, particularly given the relatively small parcel size of two (2) acres. For these reasons, staff cannot confidently make a recommendation to ZLR or the County Board supporting the proposed rezoning. As such, staff respectfully recommends denial of the petition based on the following findings of fact.

#### Findings of Fact:

1. The current zoning district supports the current activities on the property.
2. The landowner currently operates Ironman Buildings contracting business as a home occupation within the existing residence and has an opportunity to operate it from the existing accessory building within the current zoning of the property if a conditional use permit (CUP) is obtained for a limited family business.
3. There is a lack of information presented to support the zoning change.
4. The FP-B zoning district accommodates various commercial and industrial activities, a number of which can be very intensive and may be in conflict with surrounding residential properties. Due to the size and location of the property, potential traffic conflicts, potential parking issues, possible lighting issues, and noise issues may result by this zoning change.