
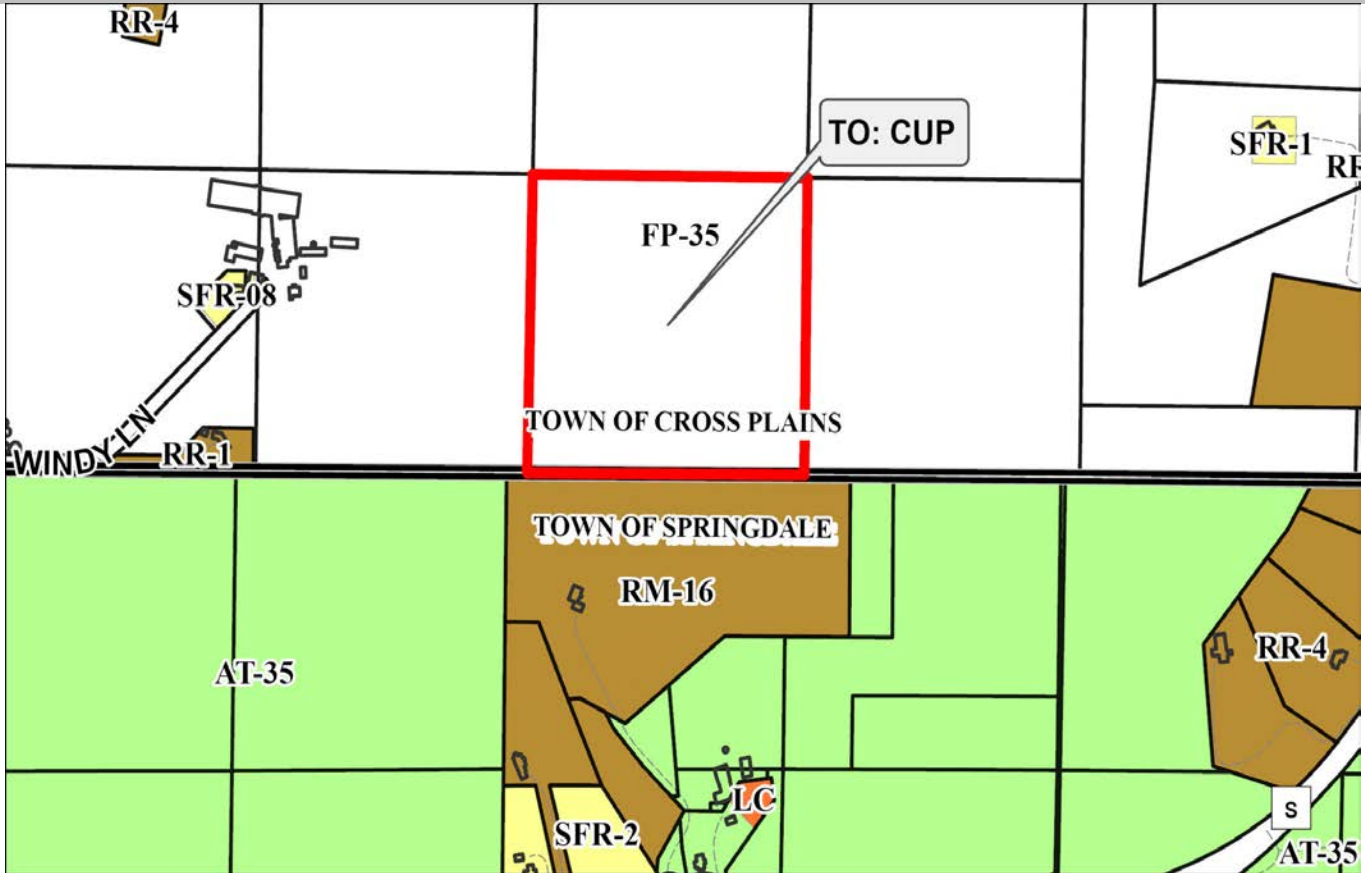


Staff Report  Zoning and Land Regulation Committee	Public Hearing: May 28, 2024 June 18, 2024		Conditional Use 02614
	Zoning Amendment Requested: TO CUP: Farm residence		Town/Section: CROSS PLAINS, Section 32
	Size: 40 Acres	Survey Required.	Applicant LYNN AND JEROME ZANDER
	Reason for the request: Farm residence		Address: EAST OF 9283 WINDY LANE



DESCRIPTION: Jerome and Lynn Zander request a conditional use permit (CUP) for a second farm residence on their dairy farm. They would like to build a new home to live in so that their son, who also works on the farm, can live in the original farm house. The home would be built in the east end of the property on a wooded hill east of a stream. A new long driveway would be built using an old field road which is the only way to access the eastern 22 acres they own.

OBSERVATIONS/ FACTUAL INFORMATION: The property is zoned FP-35 Farmland Preservation. A farm residence is a conditional use in the FP-35 zoning district, which means approval of a CUP is required in order to have one. To be considered a “farm residence” for zoning purposes, the home must be occupied by the owner-operator of the farm, a parent or child of the owner-operator, or an individual who earns more than half of their income from the farm, or be a migrant labor camp. With their CUP application, the Zanders provided the information required by the zoning ordinance to verify that they have a working farm operation.

The property is in agricultural use and is part of a farm property that is hundreds of acres in size. The subject parcel for this petition abuts the town border, with lands in the Town of Springdale to the south. The neighboring lands consist of agricultural use or wooded open space, with one rural residential property adjacent to the south. An ATC electrical transmission line has been constructed through the farm between the dairy operation and the proposed home site. In addition, an intermittent stream runs through the property that is a tributary to the Sugar River to the northeast, and wetlands and hydric soils are present along the stream.

RESOURCE PROTECTION: The property contains delineated wetlands and waterways which will be crossed in order to reach the proposed home site. This development requires a shoreland zoning permit and a shoreland erosion control permit from Dane County. Due to the amount of new impervious surface from the long driveway a stormwater management plan is required. In addition, stream crossing permits are required from the Wisconsin Department of Natural Resources (WDNR).

The applicants had a wetland delineation done to verify the location of wetlands and where the applicable shoreland and wetland setbacks will apply. They also prepared engineering plans as required for the environmental reviews, to minimize impacts to the stream. The driveway would be located at an old agricultural crossing, a location favored by DNR staff. In April the DNR issued a general permit for a limited amount of wetland fill, the construction of a water crossing, and a stormwater management pond (see DNR permits in file).

For the shoreland zoning permit, the various isolated riparian wetlands are less than two acres each; therefore no wetland setback would apply to the proposed driveway. The overall design appears to meet the shoreland setback.

COMPREHENSIVE PLAN: The property is within an Agricultural Preservation District under the [Town of Cross Plains/Dane County Comprehensive Plan](#) and the [Dane County Farmland Preservation Plan](#). All residential development (including primary or secondary farm residences) is capped at a maximum density of one unit per 35 acres owned as of December 26, 1981. If CUP 2614 is approved as submitted, 4 home sites will remain on the property. *(For questions about the town plan, contact Senior Planner Brian Standing at (608) 267-4115 or Standing.Brian@danecounty.gov.)*

CONDITIONAL USE PERMIT DECISION MAKING: “Conditional uses” are those land uses which, because of unusual nature and potential for impacts on neighboring lands, public facilities, the environment or general welfare, warrant special consideration and review.

Prior to granting or denying a conditional use, the zoning committee shall make findings of fact based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the standards required to obtain a conditional use permit. Below is the list of the applicable standards from Section 10.101(7)(d) of the Zoning Code, and a summary of the relevant facts including the applicant’s testimony with regards to meeting the standards.

1. *That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.*

The CUP application describes the proposed plan. The applicants state that this standard will be met because the proposal is a single-family residence within a 34.9-acre parcel that is currently used for crops and forested pasture.

2. *That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.*

The applicants state that the proposed home is not located near or within the view-shed of neighboring residences and will not affect adjacent parcels of land owned by others.

As noted above, the nearest home is roughly 500 feet away from the property line. In addition, the applicants have coordinated extensively with regulatory agencies for the environmental review and have obtained approval of their plans from the DNR and US Army Corp of Engineers. Construction according to the approved plans should mitigate the potential for negative impacts to the stream, wetlands, and neighboring lands.

3. *That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.*

The applicants state that the proposed home will not affect adjacent parcels owned by others. Staff notes that this property and the properties to the east are currently in agricultural use with Farmland Preservation zoning, which restricts the development potential of this area. Lands directly to the south in the Town of Springdale

contain a handful of residences; other lands to the south are in farm use and zoned AT-5 Agriculture Transition. Development of these lands would still be subject to Springdale's housing density policies and limits.

4. *That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.*

The applicants state that the new residence will be served by a new driveway, private sewer (septic) and water well, as well as a stormwater management pond and utilities.

5. *That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.*

The applicants state that the home will be accessed by a driveway near the terminus of Windy Lane, which is a low-volume rural road. There are three residences and the dairy farm operation on Windy Lane today.

6. *That the conditional use shall conform to all applicable regulations of the district in which it is located.*

The proposed use conforms to the applicable regulations of the FP-35 zoning district, and appears to conform to the regulations of the Chapter 11 Shoreland / Wetland ordinance. A farm residence is an allowable conditional use in the FP-35 zoning district.

7. *That the conditional use is consistent with the adopted town and county comprehensive plans.*

As noted above, the proposal appears consistent with the Town and County Comprehensive Plans.

8. *If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the findings described in s. 10.220(1).*

- a. *The use and its location in the Farmland Preservation Zoning District are consistent with the purposes of the district.*
- b. *The use and its location in the Farmland Preservation Zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.*
- c. *The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.*
- d. *The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.*
- e. *Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.*

The FP-35 district is intended for a wide range of agricultural and agricultural accessory uses, including activities compatible with agricultural use, with the stated purpose of preserving productive farms. The construction of a second residence for use by the farm operators is consistent with this purpose. The applicants state the home will be located in an area that is not and has not been used for farming, that its location would not affect existing agricultural land on site or on adjacent lands, and that no land will be converted from agriculture. The land disturbance and restoration will need to comply with the WDNR permit(s).

POTENTIAL NUISANCES ASSOCIATED WITH THE CONDITIONAL USE: Farm residences do not typically create nuisances for adjacent lands and neighbors. The applicant's CUP application and plans address this. In addition, the permits issued by the DNR are intended to ensure that there will not be environmental impacts to the lands and species in this area.

Potential conditions of approval specific to this CUP can be developed after public input and deliberation by the Zoning and Land Regulation (ZLR) Committee. Under Dane County Zoning Ordinance section 10.103(11), there are special requirements for farm residences:

1. *Any approved conditional use permit for a farm residence shall expire on the sale of the property to an unrelated third party. Continued use of a farm residence after sale to an unrelated third party shall require approval of a new conditional use permit.*
2. *The Zoning Committee may revoke any Conditional Use Permit it finds in violation of this section. Continued use of residence with a revoked conditional use permit shall require approval of a rezone petition to a zoning district that allows nonfarm residential use.*

3. *The Zoning Committee shall require the recording of a notice document with the Register of Deeds on the subject property notifying current and future owners of the provisions of paragraph 1. And 2. of this section.*

TOWN ACTION: On April 11, 2024 the Town Board approved the conditional use with no special conditions.

STAFF RECOMMENDATION: Staff believes the applicant has provided sufficient evidence to address the CUP standards and mitigate the potential concerns. This includes the information described in the sections above, as well as the DNR's approval of plans and issuance of permits. This is also reflected in the town's approval. If the Committee requires additional information on which to base a decision, they may request more information of the applicant or staff.

Pending any comments at the public hearing, Staff recommends that the ZLR Committee makes a finding of fact as to whether the proposal meets the CUP standards above, and we recommend approval with the conditions listed below.

CUP 2614 Potential Conditions of Approval:

Standard Conditions for all Conditional Use Permits:

1. Any conditions required for specific uses listed under s. 10.103.
2. The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan and phasing plan.
3. New and existing buildings proposed to house a conditional use must be constructed and maintained to meet the current requirements of the applicable sections of the Wisconsin Commercial Building Code or Uniform Dwelling Code.
4. The applicant shall apply for, receive and maintain all other legally required and applicable local, county, state and federal permits. Copies of approved permits or other evidence of compliance will be provided to the zoning administrator upon request.
5. Any ongoing business operation must obtain and continue to meet all legally required and applicable local, county, state and federal licensing requirements. Copies of approved licenses or other evidence of compliance will be provided to the zoning administrator upon request.
6. Existing onsite wastewater sewage disposal systems, if any, serving the conditional use must be inspected by a licensed plumber to determine its suitability for the proposed or expanded use. Deficient systems must be brought, at the owner's expense, into full compliance with the current requirements for new development of the state plumbing code and Chapter 46, Dane County Code.
7. All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
8. Off-street parking must be provided, consistent with s. 10.102(8).
9. If the Dane County Highway, Transportation and Public Works Department or the town engineer determine that road intersection improvements are necessary to safely accommodate the conditional use, the cost of such improvements shall be borne by the landowner. Costs borne by the landowner shall be proportional to the incremental increase in traffic associated with the proposed conditional use.
10. The Zoning Administrator or designee may enter the premises of the operation in order to inspect those premises and to ascertain compliance with these conditions or to investigate an alleged violation. Zoning staff conducting inspections or investigations will comply with any applicable workplace safety rules or standards for the site.
11. The owner or operator must keep a copy of the conditional use permit, including the list of all conditions, on the site, available for inspection to the public during business hours.
12. Failure to comply with any imposed conditions, or to pay reasonable county costs of investigation or enforcement of sustained violations, may be grounds for revocation of the conditional use permit.

Conditions specific to CUP # 2614:

13. This conditional use permit shall expire on the sale of the property to an unrelated third party. Continued use of a farm residence after sale to an unrelated third party shall require approval of a new conditional use permit.
14. The Zoning Committee may revoke any Conditional Use Permit it finds in violation of section 10.103(11) of the Dane County Code of Ordinances. Continued use of the residence with a revoked conditional use permit shall require approval of a rezone petition to a zoning district that allows nonfarm residential use.

15. The applicants shall record a notice document with the Register of Deeds on the subject property notifying current and future owners of the two provisions above (conditions #13 and 14).

Any questions about this petition or staff report please contact Rachel Holloway at (608) 266-9084 or holloway.rachel@danecounty.gov