

Staff Report



Zoning and Land Regulation Committee

Public Hearing: February 22, 2022

Zoning Amendment Requested:

FP-35 Farmland Preservation District TO RM-8 Rural Mixed-Use District, RR-4 Rural Residential District TO FP-1 Farmland Preservation District, UTR Utility, Transportation and ROW District TO FP-1 Farmland Preservation District

Size: 40.3,7.7,1.2 Acres

Survey Required. Yes

Reason for the request:

Creating three residential lots

Petition 11803

Town/Section:

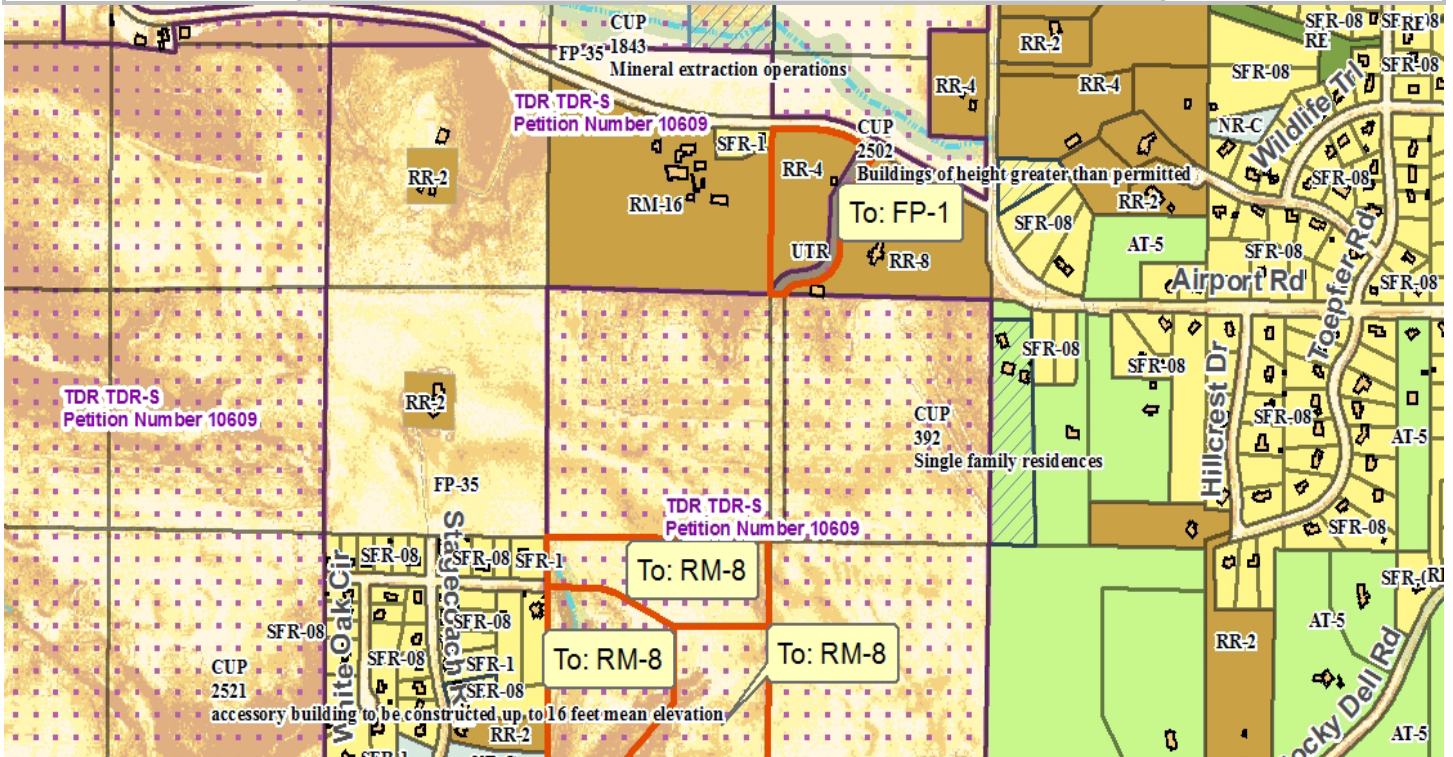
CROSS PLAINS, Section 1

Applicant

DONALD V DAVEY

Address:

EAST OF 8054 BURR OAK TRAIL



DESCRIPTION: The applicant wishes to rezone land from FP-35 to RM-8 to create 3 new residential lots approximately 12, 13 and 15 acres in size. In addition, the applicant wishes to downzone an existing, vacant RR-4 parcel to FP-1, as no development is intended on the property which abuts Airport Road. The applicant made an identical proposal under previous rezone petition #11702, which was approved by the town, ZLR Committee and County Board in the summer of 2021. The petition did not become effective because the applicant failed to comply with the [conditions of approval](#).

OBSERVATIONS: The parcel currently zoned RR-4 is located very close to the border with the town of Middleton fronting onto Airport Road. The land proposed to be divided into 3 residential lots is located to the south next to an existing rural subdivision. Class I & II soils (soils best for agricultural use) exist on proposed Lot 1. The CSM is located within the Black Earth Creek Natural Resource Area Boundary of the Dane County Parks & Open Space Plan. A natural resource area consists of land that is specifically set aside for the protection of valuable natural environments and/or greenbelt corridors that were identified through a public process. Their boundaries have no bearing on any zoning or land use decisions and participation by private landowners is on a voluntary basis.

The 3 proposed RM-8 lots are being created without direct road frontage. This type of design, utilizing a shared access/driveway, can lead to conflict in the future as ownership changes over time. An existing residential road, Burr Oak Trail, ends at the border of the proposed Lot 1, and was designed to allow for an extension into the neighboring property for future development. Ideally this road would be extended in such a way that could serve these lots as well as future development. Extending the existing town road ending in a cul-de-sac would be another appropriate alternative. Given this proposal uses a shared driveway easement to access the lots, it would be wise for the driveway to

be built to town road specifications in the event it would be dedicated as a town road at a future time. At the very least, the driveway should be designed with a turnaround area at the entrance to the property.

DANE COUNTY FARMLAND PRESERVATION PLAN: The Farmland Preservation Plan makes farmers eligible for state benefits under the Working Lands Initiative, including income tax credits under Wisconsin State Statute Ch. 91.51. The state requires that at least 80% of the area planned for farmland preservation in each town is in a farmland preservation (FP) zoning district. See [the following state administrative code provision: ATCP 49.25\(2\), Wis. Adm. Code](#)

(2) CONSISTENCY WITH FARMLAND PRESERVATION PLAN. At least 80% of the area planned for farmland preservation in each town, city, or village covered by a certified farmland preservation plan shall be included in the farmland preservation district or a district that imposes land use restrictions as restrictive as or more restrictive than the farmland preservation zoning district. The department may consider certifying a farmland preservation zoning ordinance that is between 70% and 80% consistent with a farmland preservation plan if the political subdivision can demonstrate to the secretary's satisfaction a reasonable, objective justification for the lower level of consistency.

TOWN PLAN: The subject property is in the *Agricultural Preservation* planned land use district. This district allows development at a density of 1 development right per 35 acres owned as of December 26, 1981. This proposal will exhaust the density units.

RESOURCE PROTECTION: There are no resource protection areas located on the property.

COUNTY HIGHWAYS: There is an estimated 30 trips a day resulting from this rezone.

DANE COUNTY LAND & WATER DEPARTMENT:

- Any disturbance in shoreland zone requires a shoreland erosion control permit.
- Driveways over 150 ft require erosion control permit.
- Long driveways and houses may go over 20,000 SF impervious, requiring stormwater.

STAFF: As noted above, this is a reapplication of previous [petition 11702](#). Staff recommends consideration of reduction in the size of lots, rezoning to a rural residential (RR) district rather than RM-8, and requiring that the driveway be built to town road specifications. RM-8 allows a wider variety of permitted and conditional uses than traditionally used for rural residential lots, including things such as recreational racetracks, dog kennels, and renewable electrical generating facilities. The district also does not have a per acre limit on the keeping of livestock. Having a wider range of permitted and conditional uses increases the potential for land use conflicts, especially with landowners in the neighboring single-family residential subdivision.

Because a house is allowed on the existing RR-4 parcel, this proposal would “reallocate” the development right associated with parcel #0707-011-9670-0 and allow it to instead be used to create one of the three proposed new lots. The proposed 3 lots will exhaust the density units that the owner is eligible for. It appears one additional density unit from the original 1981 farm will remain available to the Dermott property north of Airport Road.

If the proposal is approved, staff recommends the following conditions:

- Amend the petition to zone the 3 large lots to RR-8 instead of the requested RM-8.
- Deed restrict the proposed FP-1 parcel and balance of the FP-35 zoned property owned by the applicant to prohibit non-farm development (tax parcel #070701485005), as the housing density units for the property are being exhausted.
- Owner shall record a shared driveway easement agreement meeting the requirements of Chapter 75.
- The driveway shall be paved to town road standards and include a suitable turn-around area at the entrance to the property.
- Erosion control & stormwater permits shall be required prior to development.

Any questions about this petition or staff report please contact Majid Allan at (608) 267-2536 or allan@countyofdane.com

TOWN: The town has indicated it stands by its previous approval of petition 11702.