



# Dane County Planning & Development

## Division of Zoning

Appeal No. 3700  
 Date Received May 28, 2019  
 Date of Public Hearing 7/2019

### VARIANCE APPLICATION:

**Owner:** Bryan J. and Mary S. McMillan  
**Mailing Address:** 921 Lorena Parkway  
Madison, WI 53713  
**Phone Number(s):** 608-516-1026  
**Email Address:** bigb222@sbcglobal.net

**Assigned Agent:** Cory Horton  
**Mailing Address:** 5250 E. Terrace Drive, Suite 108  
Madison, WI 53718  
**Phone Number(s):** 608-421-5310  
**Email Address:** cory.horton@rasmith.com

**To the Dane County Board of Adjustment:**

*Please take notice that the undersigned was refused a permit by the Dane County Zoning Division, Department of Planning and Development, for lands described below for the reason that the application failed to comply with provisions of the Dane County Code of Ordinances: Chapters 10 – Zoning, 11 – Shoreland, Shoreland-Wetland & Inland-Wetland, 17 – Floodplain Zoning, and/or 76 – Airport Height Regulations. The owner or assigned agent herewith appeals said refusal and seeks a variance.*

Parcel Number: 0610-102-8910-7 Zoning District: SR-8 Acreage: 1.042  
 Town: Dunn Section: 10 1/4NW1/4NW  
 Property Address: Exchange Street  
 CSM: \_\_\_ Lot: \_\_\_ / Subdivision: \_\_\_ Block/Lot(s): \_\_\_  
 Shoreland: (Y) / Floodplain: (Y) / Wetland: (Y) / Water Body Yakara River  
 Sanitary Service: Public / (Private) (Septic System)

Current Use: RECREATION

Proposal: SINGLE FAMILY HOME

NOTE: You are encouraged to provide a complete and detailed description of the existing use and your proposed project on an attached sheet.

**REQUIRED BY ORDINANCE**

Section	Description	Required	Proposed or Actual	Variance Needed
<u>11.03(2)(a)2</u>	<u>WETLAND SETBACK</u>	<u>75</u>	<u>70</u>	<u>5</u>

**PRESENTING YOUR CASE TO THE BOARD OF ADJUSTMENT:**

An Area Variance may be authorized by the Dane County Board of Adjustment to vary one or more of the dimensional or physical requirements of the applicable ordinance in connection with some proposed construction.

The burden will be on you, as property owner or authorized agent, to provide information upon which the board may base its decision. At the hearing, any party may appear in person or may be represented by an agent or attorney. You or your agent must convince the zoning board to make a ruling in your favor. The board must make its decision based only on the evidence submitted to it at the time of the hearing, including the staff report. Unless you or your agent is present, the board may not have sufficient evidence to rule in your favor and may then deny your application.

Please answer the four questions below. You are encouraged to attach a separate sheet, labeling the answers (1) through (4), to provide enough detail to support your appeal:

(1) Describe alternatives to your proposal such as other locations, designs and construction techniques. Attach a site map showing alternatives you considered in each category below:

(A) Alternatives you considered that comply with existing standards: If you find such an alternative, you can move forward with this option with a regular permit. If you reject compliant alternatives, provide the reasons you rejected them.

SEE ATTACHED

(B) Alternatives you considered that require a lesser variance: If you reject such alternatives, provide the reasons you rejected them.

SEE ATTACHED

(2) Will there be an unnecessary hardship to the property owner to strictly comply with the ordinance?

*Unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome.*

*An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home or claiming that they need more outbuilding space than that permitted to store personal belongings). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.*

SEE ATTACHED

(3) Do unique physical characteristics of your property prevent compliance with the ordinance? If yes, please explain. **The required Site Plan and/or Survey submitted with your application must show these features.**

*Unique physical limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with the ordinance requirements. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances. Nearby ordinance violations, prior variances, or lack of objections from neighbors do not provide a basis for granting a variance.*

*See ATTACHED*

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(4) What would be the effect on this property, the community or neighborhood, and the general public interest if the variance were granted? Describe how negative impacts would be mitigated. **The required Site Plan and/or Survey submitted with your application must show any proposed mitigation features.**

*These interests may be listed as objectives in the purpose statement of an ordinance and may include: Promoting and maintaining public health, safety and welfare; protecting fish and wildlife habitat; maintaining scenic beauty; minimizing property damages; ensuring provision of efficient public facilities and utilities; requiring eventual compliance for nonconforming uses, structures and lots; drainage; visual impact; fire safety and building code requirements; and any other public interest issues.*

*See ATTACHED*

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#### **REQUIRED PLANS AND SPECIFICATIONS:**

In addition to providing the information required above, you must submit:

1. **Site Plan:** Complete and detailed plans of your lot or lots, drawn to a standard and easily readable scale. **In most cases, a survey by a Registered Land Surveyor is needed.** The Site Plan/Survey should include the following, as applicable, as well as any unique existing features of the lot and any proposed mitigation features, as described above:
  - Scale and North arrow
  - Road names and right-of-way widths
  - All lot dimensions
  - Existing buildings, wells, septic systems and physical features such as driveways, utility easements, sewer mains and the like, including neighboring properties and structures.
  - Proposed new construction, additions or structural alterations.
  - For property near lakes, rivers or streams:
    - Location of Ordinary High Water Mark (OHWM) Elevation
    - Location of Floodplain Elevation
  - For property near Wetlands, a Wetland Boundary determination by a qualified professional consultant may be required.
  - Topographic survey information may be desirable or necessary.
  - Setbacks from any existing or proposed structures (building) to lot lines, right-of-way lines, Ordinary High Water Mark, and/or Wetland Boundary, as applicable.
  - For setback from Ordinary High Water Mark Variance Appeals, the setbacks of the two neighboring structures from the OHWM may be required.

**2. Floor Plans and Elevations:** Professionally-prepared plans and elevations are not required, but the plans submitted must be drawn to a standard and easily readable scale, must show each story of the building or structure, and must include all parts of existing and proposed structures, including any balconies, porches, decks, stoops, fireplaces and chimneys. Exterior dimensions must be included. Show all exit door locations, including sliding doors, and any windows or other features that are pertinent to your appeal. The plans may be a preliminary version, but are expected to represent your actual proposal for the use of your lot.

Please consult with the Assistant Zoning Administrator regarding required plans for non-conventional structures such as signs, construction cranes, etc.

**3. Town Acknowledgment:** Obtain a signed, dated memo or letter from the Town Clerk or Administrator of the Town where the variance is needed, acknowledging that you have informed them of your intention to apply for the variance(s). You probably will need to appear before the Town Board and/or Plan Commission, which will provide advisory input requested by the Board of Adjustment.

**APPLICANT SIGNATURE:**

*The undersigned hereby attests that all information provided is true and accurate, and further gives permission to Planning & Development staff and Board of Adjustment members to view the premises, in relation to the Appeal request made herein, during reasonable daylight hours.*

Signature Required:  Date: 5-24-19

Print Name: Bryan McMillan

Specify Owner or Agent: Owner  
**Agent must provide written permission from the property owner**

**STAFF INFORMATION:**

Date Zoning Division Refused Permit (if different from filing date)

Filing Date

Filing Materials Required:

- Site Plan
- Floor Plans
- Elevations
- Fee \_\_\_\_\_ Receipt No. \_\_\_\_\_
- Town Acknowledgement Date

Notices Mailed Date

Class II Notices Published Dates

Site Visit Date

Town Action Received Date:

Public Hearing Date

Action by B.O.A. \_\_\_\_\_

**Approved** by: \_\_\_\_\_ Date: \_\_\_\_\_  
Director, Division of Planning Operations, Department of Planning and Development

## Variance Request for McMillan Property Exchange Street

### **PROJECT HISTORY**

The site is located at Exchange Street just east of US-51. (PIN 061010289107). Historically, a structure existed on the site for over 50 years. This structure had a slab and block wall foundation. Over time, the structure fell into disrepair and the previous owner accumulated large amounts of trash and debris on the site (primarily in the wetland and wetland buffer).

The McMillans purchased the site in 2015 and proceeded to clean up significant amounts of trash and debris from the site. The debris cleanup included the removal of over 250 tires from the site. The owners also desired to have a home on the site. They began repairs to the existing structure, however have since stopped work after learning permits were required.

To date, the McMillans have obtained a wetland delineation (prepared by a WI-DNR assured delineator), parcel status determination, and septic evaluation. The parcel status determination identified that the parcel was a legally created lot. The owner is seeking the reasonable use of his previously existing lot.

The property was previously zoned NR-C but was rezoned to SFR-08 during the comprehensive rezoning that took place in 2019. In the SFR-08 zoning district, principal building setbacks are:

- Front Yard - 63-feet from the highway centerline or 30-feet from the right of way line
- Side yards - 10 feet
- Rear Yard – 50-feet
- Wetland (County) – 75-feet
- Wetland (Town) – 100-feet

### **1A – ALTERNATIVES CONSIDERED:**

The owner evaluated alternatives for constructing a home within the above setback requirements. As can be seen in the included site plan – the setbacks present a major challenge. The front/side/rear/and wetland setbacks make siting a home impossible without obtaining a variance from the County or Town. Quite simply, the Town 100-foot wetland setback provides virtually no space on the lot that is free from front yard setbacks.

### **1B ALTERNATIVES REQUIRING A LESSER VARIANCE**

The owner evaluated shifting the home site to minimize the variance request. The owner first evaluated shifting the home outside of the 75-foot County wetland setback. The home cannot be shifted enough northwest to get outside of the County wetland setback while not encroaching on the front yard setback.

The owner then evaluated rotating the home to meet the County setbacks. This alternative still requires a variance from the Town for the wetland setbacks and does not work well with the driveway and site topography. The existing foundation is located on a topographic high point. Drainage splits and flows north and south of the driveway and foundation site. The driveway and drainage would need to be extensively re-graded to make the option work. Most importantly, this alternative does not result in the

best protection of the wetland resource. Rotating the home would necessitate removal of the existing foundation, as well as major excavation and grading within the Town 100-foot wetland setbacks. As previously mentioned, there is an existing foundation and driveway present on the site. Utilizing this existing foundation and driveway enables the McMillans to construct their home with virtually no ground disturbance. The above approach was presented to the Town in a pre-application meeting (minutes attached), and subsequently an amendment was made to the Town's Comprehensive plan to allow flexibility to the wetland buffer variance for these specific circumstances.

The purpose of wetland setbacks are to protect the wetland. For this reason, the Owners desire to utilize the existing foundation in order to minimize site disturbance and associated wetland buffer impacts.

## **2 HARDSHIP ASSOCIATED WITH STRICT COMPLIANCE WITH THE ORDINANCE**

The lot was legally created and had a structure on it before the wetland setback regulations were created. The strict compliance with the ordinances would result in the parcel becoming unbuildable.

## **3 UNIQUE PHYSICAL CHARACTERISTICS OF THE PROPERTY**

The site contains topographic, wetland, and floodplain characteristics that are unique to the property. The location of these features and associated setbacks create a unique difficulty in meeting the setbacks. The site also contains previously constructed foundation and driveway that presents an opportunity for construction that provides better protection for the wetland resource.

## **4 EFFECTS OF GRANTING VARIANCE**

If the variance is granted, it allows a site development that reduces ground disturbance and environmental impacts to the property and surrounding resources. Vegetation disturbance would be minimized, wildlife protection would be maximized, and the scenic beauty of the site would be maintained. It would also result in less construction noise and disturbance to the neighborhood.

The unique circumstances of this site create an opportunity to allow a variance to better protect the environment, while not creating a dangerous future precedent for wetland protection.

## **VARIANCE REQUESTED**

The applicant requests a variance to the wetland setback listed in 11.03(2)(a)2 to allow the wetland setback on the property to be reduced to 70-feet.

## **ATTACHED INFORMATION**

- 1) Plat of survey prepared by Wisconsin Mapping, LLC – showing property lines, rights of way, floodplain, normal water level and the existing block wall foundation
- 2) Site plan showing wetland boundary, 75-foot buffer, 100-foot buffer, front and side yard setbacks
- 3) Photo of the existing slab/block wall foundation
- 4) Town of Dunn pre-application meeting minutes from February 11, 2019. ***Town letter acknowledging pre-application was directly mailed from the Town to Hans Hilbert at the County.***





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**PLAN COMMISSION MEETING AGENDA  
MONDAY, FEBRUARY 11, 2019, 7:00 P.M. AT THE DUNN TOWN HALL**

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See Page

**I. Minutes – Approve minutes of the January 14, 2019 meeting**

**II. Announcements**

- A. A Comprehensive Plan Subcommittee will be formed to meet and update the Comprehensive Plan before June 1, 2019.

**III. Business**

- A. Consider making a recommendation on Dane County Rezone #11386 to rezone two 2.3 acre areas from A-1EX (agricultural) to RH-1 (residential) in order to create two new residential lots for R&R Farms Inc for the property at 2181 US Highway 51.  
Town of Dunn land division applicaton  
csm boundary  
DCPREZ-2018-11386  
R R Farms - soil test Lot 1  
R R Farms - soil test Lot 2  
Rezone Map  
rezone
- B. Consider the Certified Survey Map submitted by R&R Farms Inc to create 2 new residential lots on the farm located at 2181 US Highway 51 in section 23.  
R and R Farms CSM
- C. Pre-application meeting with Brian McMillan to discuss a 29.3 foot variance from the Town of Dunn's 100 foot wetland setback and a 4.3 foot variance from Dane County Zoning's 75 foot wetland setback for the purpose of building a new home at a property on Exchange Street in section 10.  
Plat of Survey  
Site Plan For Variance Report-1  
IMG 1653

Posting Date: January 29, 2019

Contact the Clerk's office at 608-838-1081 or townhall@town.dunn.wi.us in advance if you need to request assistance to participate in this meeting due to disability.



Ben explained that an ideal spot without any of the aforementioned restrictions would be just north of the existing development located on the corner of Dyreson and Schneider. The clustering of new and existing lots would be met and there would be no concerns for septic. The only restriction is 2.3(h), which states: *Where practical, non-agricultural development is to be located on non-prime farmland.* The applicants stated that they chose the existing sites to not interfere with tillable soils.

The applicants explained that even though the lots were not clustered with existing development, they tried to at least cluster the lots with each other. Ben explained that clustering lots with each other is listed as a requirement in the Comprehensive Plan. Commissioners discussed that they understood the desire of the property owners to not develop on the tillable area of the farm and appreciated that the two new lots were clustered with each other and would therefore be favorable to not requiring clustering with existing lots for these reasons.

**Motion: Gardner/Cisler to recommend approving Dane County Rezone #11386 to rezone two 2.3 acre areas from A-1EX (agricultural) to RH-1 (residential) in order to create two new residential lots for R&R Farms Inc for the property at 2181 US Highway 51 conditioned upon:**

**1) A deed restriction being recorded on the remaining land that all development rights have been exhausted on this property and additional land divisions for residential development are prohibited.**

- B. Consider the Certified Survey Map submitted by R&R Farms Inc to create 2 new residential lots on the farm located at 2181 US Highway 51 in section 23. Ben stated that these two lots are for the rezone that was just recommended for approval by the Plan Commission. Because the farm technically owns to the middle of Dyreson Road and the two new lots will not own this area, the Town Board will need to accept the road right of way and dedicate this to the public.

**Motion: Gardner/Van Brocklin to approve the Certified Survey Map submitted by R&R Farms Inc to create 2 new residential lots on the farm located at 2181 US Highway 51 in section 23 conditioned upon:**

**1) Town Board acceptance of the road right of way dedicated to the public**

**2) Full approval of the accompanying rezone petition**

- C. Pre-application meeting with Brian McMillan to discuss a 29.3 foot variance from the Town of Dunn's 100 foot wetland setback and a 4.3 foot variance from Dane County Zoning's 75 foot wetland setback for the purpose of building a new home at a property on Exchange Street in section

10. Ben stated that Brian McMillan would like to build a new home on his property on Exchange Street. Dane County has determined that this is a buildable lot, however the footprint in which Brian can build the home is limited by setbacks. Currently, there is a foundation and partial cement walls of an old garage on the property. The County has determined that the remains of this building are considered demolished and nonexistent, and therefore abandoned. Any new construction would need to meet current zoning regulations. This includes building anything on the current foundation.

Brian would like to use this foundation to build his home, however part of the demolished structure lies within both the Town of Dunn and Dane County wetland setback area. In order to build the home, the Town would need to grant a 29.3 foot variance from Dunn's 100 foot wetland setback and a 4.3 foot variance from Dane County's 75 foot wetland setback. Our Comp Plan only allows for the Town to consider variances of 25 feet or less (or to the County's 75 foot wetland setback line). If the Town allows Brian to build in this setback, the Comp Plan would need to be amended to allow for this.

Cory Horton of RASmith, who did the latest wetland delineation, was present and stated that he believes that using the existing foundation would provide a greater protection of the wetland resource, rather than tearing out the foundation and putting in a new one that is 4.3 feet further back. He shared that he understands the need to protect wetlands and that other communities allow for development encroachment on one part of a wetland buffer, if the property owner enhances the wetland in another area of the property.

Brian shared that he has worked hard to clean up the property and improve the environmental value by removing hundreds of tires and debris. Ben read a letter from neighbor, Ken Brost, that was in support of Brian's appeal. Brian stated that he already has a driveway permit and a holding tank permit for the property. Ben clarified that a driveway permit has not been issued. Instead a field road access permit was issued and this does not guarantee a home site. Additionally, Ben clarified that a holding tank permit was issued by the County, but the Town still needs to approve a holding tank permit before this can be constructed, and consideration of this permit will only happen once a homesite is approved.

Commissioners discussed that they would be open to having the Comp Plan Update Subcommittee look into whether the Town should allow for an additional wetland setback variance in situations like this. Until then, the Plan Commission would not be able to grant a variance for this project.

**No action. Pre-application only.**

Meeting adjourned by Chair Molloy at 8:00 pm.

Submitted by Ben Kollenbroich, Planning and Land Conservation Director

Contact the Clerk's office at 608-838-1081 or [townhall@town.dunn.wi.us](mailto:townhall@town.dunn.wi.us) in advance if you need to request assistance to participate in this meeting due to disability.

Value Set: 13B (Effective 6/1/2013)

Top chord 2x6 SP 2400F-2.0E  
 Bot chord 2x6 SP 2400F-2.0E :B2 2x6 SP #1:  
 Webs 2x4 SP #2 :W2, W4 2x6 SP #1:  
 :Lt Wedge 2x8 SP #1 :Rt Wedge 2x8 SP #1:

Lumber value set "13B" uses design values approved 1/30/2013 by ALSC

Collar-tie braced with continuous lateral bracing at 24" OC, or rigid ceiling.

WARNING: This truss doesn't meet L/360 LL and L/240 TL relative deflection criteria. Actual is L/377.35 LL and L/226.40 TL. Creep increase factor for dead load is 2.00.

(\*\*) 2 plate(s) require special positioning. Refer to scaled plate plot details for special positioning requirements.

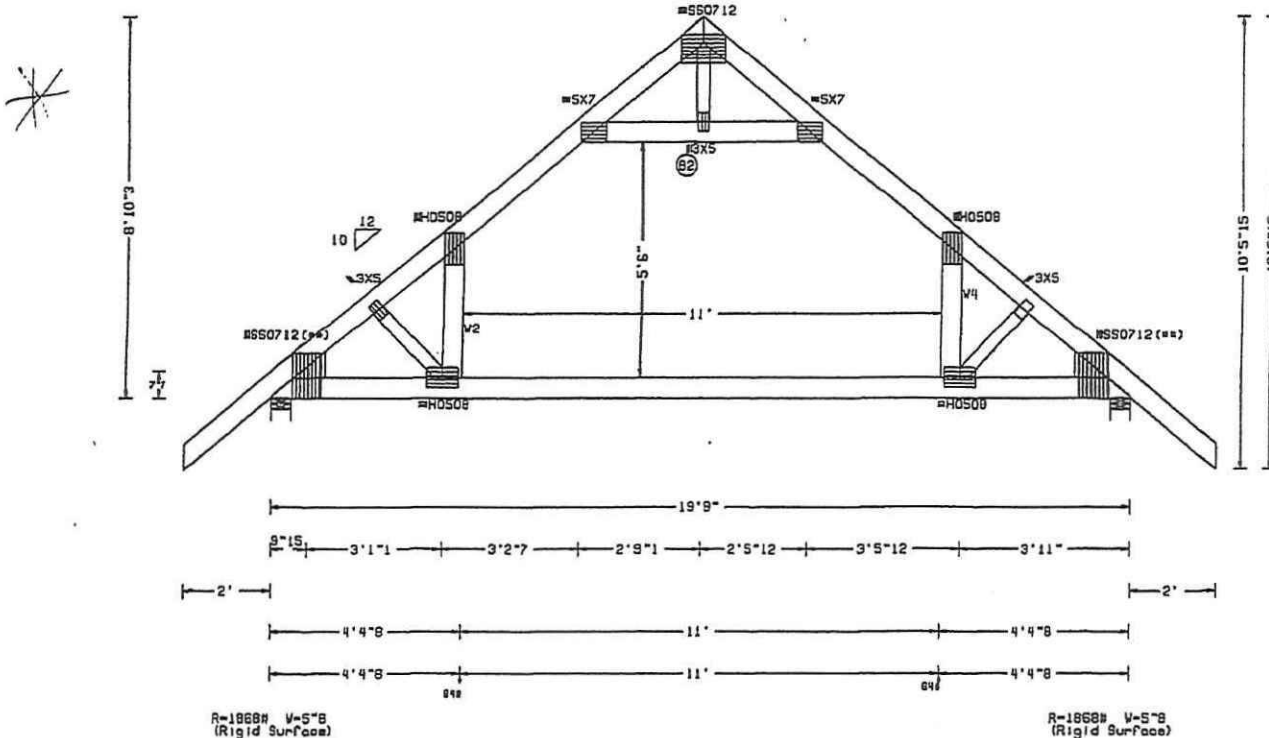
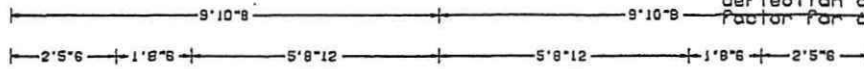
In lieu of structural panels or rigid ceiling use purlins to laterally brace chords as follows:

CHORD	SPACING (IN OC)	START (FT)	END (FT)
TC	24	-2.00	21.75
BC	120	0.15	19.60

Apply purlins to any chords above or below fillers at 24" OC unless shown otherwise above.

Attic room loading from 4-4-8 to 15-4-8: Live Load: 40 PSF, Dead Load: 10 PSF  
 Ceiling: 10 PSF, Knee walls: 10 PSF

WARNING! Mid-panel deflections excessive Truss has vertical deflection of 0.38" due to live load and 0.51" due to dead load. Creep increase factor for dead load is 2.00.



← 27'6" →

