



In order to obtain a Conditional Use Permit, an applicant must provide **substantial evidence** to demonstrate that the application, and all requirements and conditions established by the county relating to the conditional use, are or shall be satisfied. Substantial evidence means, *“facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.”*

Prior to granting or denying a conditional use, the zoning committee shall make written findings of fact based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the following standards:

- a. 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;
- b. 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;
- c. 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;
- d. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made;
- e. 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;
- f. That the conditional use shall conform to all applicable regulations of the district in which it is located.

In addition, the following standards apply to conditional uses proposed in the farmland preservation districts:

1. The use and its location in the Farmland Preservation Zoning District are consistent with the purposes of the district.
2. 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.
3. 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.
4. 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.
5. Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

The zoning committee must deny a conditional use permit if it finds that the standards for approval are not met, and must approve if it finds that the standards for approval are met. The decision to approve or deny a conditional use permit must be supported by substantial evidence. Any conditions imposed must be based on substantial evidence, related to the purpose of the ordinance, reasonable, and, to the extent practicable, measurable.

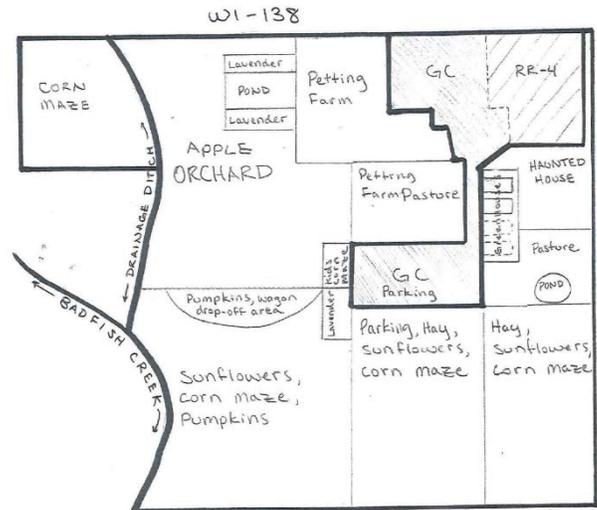
## RELEVANT FACTS & INFORMATION

Location, size, existing use and characteristics of subject property: The subject property is located in Section 10 of the town of Rutland and part of a larger farm totaling approximately 300 acres. Existing land uses are agricultural / open space, with agricultural business uses occurring on a smaller portion of the property. The proposed 75 acre conditional use area consists of approximately 80 percent agricultural land (cropland / orchard / Christmas trees / pasture), with the remaining 20 percent devoted to a mixture of other uses (ag business, pond, trails, accessory buildings, parking area).

Surrounding land uses include agriculture / open space and scattered rural residences. The Oregon Branch of the Badfish Creek runs along the western boundary of the property with associated shoreland and floodplain area. A related tributary also bisects the north-western corner of the property. The closest non-participating residences are located to the west and east (3957 and 3835 STH 138) and approximately 500-600+ feet away from the property boundary. Existing tree lines appear to separate the property from the closest residential lots.

Current zoning and applicable district regulations: Current zoning is FP-35 but a change is proposed to the FP-B (Farmland Preservation - Business) district under rezone petition 11527.

Agricultural entertainment, farm related exhibitions, and sale of ag and dairy products not produced on the premises are listed as a conditional use in the FP-B district.



Utilities, access, drainage, and other necessary site improvements: The applicant has submitted plans showing the location of various activities, attractions, and parking areas and has indicated that property already has adequate utilities, access, drainage, and other site improvements. Applicant also indicates that state DOT staff have determined that a turn-off lane is not necessary to accommodate traffic coming and going from the site. No specific information on the number of parking spaces was provided, though it appears the several parking areas depicted on the site plans should be sufficient to accommodate anticipated customers. No specific information was provided regarding sanitary facilities to be provided with the initial application submittal. Trash services will be provided through Peliterri waste systems. There will be no outdoor storage beyond agricultural equipment used in the farm operation. Small outdoor loudspeakers are placed around the stage area for puppet shows, presentations, and to play music during events. A minimal amount of outdoor lighting is used to illuminate Christmas tree sales area, and the parking area for the haunted house attraction. No additional signage is proposed.

Operations Plan: Public hours of operation are typically 10am to 5pm daily, with the haunted house seasonal attraction open until 11pm. Up to 75 employees during height of the season, with up to 85 part time employees assisting in the operation of the haunted house attraction. Applicant anticipates 20 – 200 customers on average days, with up to 1,500 on event days. See application submittal for detailed information on the various agricultural entertainment activities occurring.

**TOWN PLAN:** The property is located in the town's agricultural preservation area.

**RESOURCE PROTECTION:** Narrow bands of resource protection corridor associated with the perennial streams are located along the western portion of the property. There is no new development proposed that would impact the resource protection corridors.

**STAFF ANALYSIS:** Issues that may be commonly associated with large scale agricultural entertainment and related activities include traffic and noise. The applicant has owned and operated the ag entertainment business for many years without serious incident. The department has not received any complaints of zoning violations.

Both town and county plan policies support ag-related commercial uses in designated farmland preservation areas. Property characteristics, including its large size, location along a state highway, relatively secluded location and presence

of natural screening along property boundaries, should serve to limit the potential for negative impacts to neighbors. The proposal appears reasonably consistent with town plan policies.

Staff believes that the applicant has submitted substantial evidence in the form of information and plans for operation of the conditional use, and that the proposal will satisfy the applicable standards for approval of a conditional use permit noted in the section above.

Staff has prepared the following list of recommended conditions based on substantial evidence and which may be applied to ensure the use meets the applicable standards for approval and the purposes of the ordinance. The majority of the conditions listed below are standard requirements found in section [10.107\(d\)\(2\)](#) of the county zoning code. Please note that the conditions may need to be changed or additional conditions added to address potential nuisances that may come to light during the public hearing.

1. The conditional use permit shall be for agricultural entertainment activities or special events occurring over 10 days / year; farm related exhibitions, sales or events such as auctions, dairy breakfasts, exhibitions of farm machinery and technology, agricultural association meetings and similar activities occurring over 10 days / year.
2. For any such activities planned or anticipated to have attendance of more than 200 persons at any one time during a day, the permit holder shall file an event plan in accordance with the requirements of section [10.103\(3\)](#), Dane County zoning code.
3. Hours of operation shall be 7am-11pm, daily.
4. The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan and, if applicable, phasing plan.
5. Noise levels from outside loudspeakers shall be limited to no more than 70 decibels measured at the property line.
6. Any outdoor lighting shall limit light pollution onto adjoining, non-participating properties.
7. 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.
8. 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.
9. 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.
10. Suitable sanitary facilities shall be made available to customers. 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.
11. All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
12. Off-street parking must be provided, consistent with s. [10.102\(8\)](#).
13. If, in the future, the State Department of Transportation determines 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.
14. 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.
15. The owner must post, in a prominent public place and in a form approved by the zoning administrator, a placard with the approved Conditional Use Permit number, the nature of the operation, name and contact information for the operator, and contact information for the Dane County Zoning Division.
16. 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.
17. 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. The holder of a conditional use

permit shall be given a reasonable opportunity to correct any violations prior to revocation. If any use allowed by an approved conditional use permit is abandoned for one year or more, the associated conditional use permit shall be terminated. Future re-establishment of an abandoned conditional use shall require approval of a new conditional use permit.

**STAFF UPDATE:** The petition was postponed at the June 23, 2020 ZLR public hearing due to no town action. There were no registrants in opposition at the hearing, and no unresolved issues/questions by staff or committee members. The applicant indicated their understanding and support of the recommended conditions of approval. The town approved the CUP at a meeting on August 4, 2020. Staff recommends approval of the CUP with the 17 recommended conditions.

**TOWN:** Approved with staff recommended 17 conditions.