



Dane County Planning & Development Zoning Division

August 13, 2024

Dane County Board of Adjustment

August 22, 2024

Staff Report

1. Consideration of suspension of rule 4.a) to allow hearing of Appeal 3727 filed more than 30 days beyond the date of written decision or order.

In a notice of violation letter dated March 6, 2024, Dane County Zoning informed Maier Farm Real Estate LLC (Maier) of a wetland zoning violation existing on their property. The alleged violation was that the installation of drain tile and a pump in the wetland was a prohibited use. The letter provided two options to bring the property into compliance, 1) removing the illegal use, or 2) rezone the property out of wetland.

In response to the notice of violation, Jeff Kraemer, Maier's wetland delineator, stated in an e-mail dated March 12, 2024 that, "the project is compliant with Chap. 11.07 2(c) which allows for tiling within areas subject to inland wetland zoning to the "...extent necessary to maintain the level of drainage required to continue the existing agricultural use"".

In response to their position that the use was permitted, Dane County Zoning requested a written description of pre-existing agricultural drainage systems being maintained or repaired, a description of the pre-existing agricultural use, and an explanation of how the installed tiling was determined to be the minimum level of drainage required to continue the agricultural use.

Upon receiving Mr. Kraemer emailed response on March 15, 2024, Zoning staff reviewed it and issued a notice of non-compliance dated March 20, 2024 which is the determination Maier is seeking to appeal. The notice reaffirmed the wetland zoning violation does exist and reiterated the options to bring the property into compliance as stated in the March 6, 2024 notice of violation. It also outlined the appeal process:

"Any person aggrieved by any decision of the zoning administrator or other administrative officer, may appeal that decision to the Dane County Board of Adjustment by following the procedures in DCCO 10.101(9) within 30 days of the determination date."

On April 16, 2024, Attorney Christopher Nelson, agent for Maier, filed a petition to rezone out of wetland. The petition was placed on the June 18, 2024 public hearing of the Zoning and Land Regulation Committee (ZLR). In accordance to their rules the ZLR postponed action on the petition until the July 9, 2024 work meeting of the ZLR. At this meeting the ZLR recommended the petition for denial. Final action of the rezone petition, taken by the County Board at the July 18, 2024 meeting, was to deny the petition.

On July 19, 2024, 121 days following the notice of non-compliance, the owner's agent filed an application for an administrative appeal of the Zoning Administrator's March 20, 2024 determination.

Per rule 4.a) of the Board of Adjustment Rules and procedures:

"Appeals of administrative decisions, including appeals of the grant or denial of a conditional use permit, per 10.101(7)4., shall be filed within 30 days after the date of receipt of a written decision or order from which the appeal is taken by filing a notice of appeal with the Zoning Administrator or the Chair of the Board. The date of receipt by the appellant of the decision, order, requirement or interpretation of the Zoning Administrator or other administrative officer shall be confirmed by the date of the appellant's or other accepting party's signature on a U.S. Postal Service Certified Mail Return Receipt, if any, or by notarized statement of the appellant submitted with the appeal. The date of receipt of the decision shall not be counted in determining the time for filing of the appeal. Sundays and holidays shall be counted, except if the last day falls on a Saturday, Sunday or legal holiday, the time for filing shall be extended to the next secular day. Failure to meet the time deadline is jurisdictional and the matter will be dismissed on that basis."

At Zoning staff's request regarding how to process an untimely appeal, Corporation Counsel recommended scheduling the matter before the Board of Adjustment to determine if the appeal is timely and for final disposition.

Potential actions of the Board

- A. Find that the appeal is timely. This will require suspension of rule 4.a) by a majority vote of the members present. Staff will then coordinate with the appellant to schedule the matter on a future public hearing where the Board will hear and review the merits of the case.
- B. Find that the appeal is untimely and dismiss the matter on that basis. This will be the final disposition of the appeal.

Staff report prepared by Assistant Zoning Administrator, Hans Hilbert.