

Dane County Towns Association/Dane County Planning & Development Department

Listening Session on the Dane County Zoning Ordinance

Thursday, July 28, 2022

7:00 to 9:00 p.m.

Town of Dunn Highway Garage

“Meeting Notes & Issues Summary”

Welcome and Introductions. This meeting was jointly sponsored by the Dane County Towns Association (DCTA) and the Dane County Planning and Development Department (DCPDD). The town of Dunn graciously agreed to host and provide the venue. It began shortly after 7:00 p.m. with DCTA and Dane County staff introducing themselves and stating the meeting objectives. There were over 30 persons in attendance. Attachment A to this summary includes the meeting agenda, and Attachment B is the meeting flyer.



Figure 1: July 28 meeting, town of Dunn highway garage. Photo courtesy of Sup. Tom Mathies, town of Verona.

Meeting Objective. The primary focus of the meeting was to hear from town officials within county zoning about their observations and experiences thus far with the Dane County Zoning Ordinance, which was comprehensively revised in 2019. Town officials have a direct and meaningful perspective on the zoning ordinance, and there is a lot to be learned from their experiences. The objective is to ultimately compile a list of ideas for possible consideration of an ordinance amendment, with the unending goal of refining and improving our ordinance over time.

Brainstorming and Discussion of Ideas. The following numbered topics were raised and discussed in the meeting. Some of the topics were raised in advance by Planning and Development Department staff to initiate discussion, and additional topics and feedback were received from representatives of the towns and others in attendance.

1. *Short Term Vacation Rentals (“Transient or Tourist Lodging”)*. With the prevalence and increasing interest in online booking platforms like *Airbnb* and *Vrbo*, and the associated potential for economic returns for property owners, short term rental of residences is a timely topic. The county zoning ordinance refers to the use as, ‘[transient or tourist lodging](#)’. Currently, transient or tourist lodging is listed as a conditional use in the county’s residential zoning categories and a permitted use in the commercial zoning districts.

County staff noted that additional application requirements and standards to fine-tune the ordinance may be warranted. Attendees commented that more could be done to ensure that consistent safety standards are being met across all towns and locations, like ensuring there are working carbon monoxide detectors in the residence, placing limitations on the number of persons staying in a particular location, and ensuring sanitation standards are being met and enforced. It’s worth noting that all short term vacation rentals are required to obtain a license from the public health department, which includes an annual inspection requirement to verify the operation meets all requirements of Wisconsin law related to general public health. More information about the public health license, including access to health inspection reports can be found online, [here](#).

Concerns were raised about properly functioning smoke and fire alarms and what reasonable means may be available to ensure their presence. Additional subjects raised by attendees under this topic included the following:

- a. Note the experience of former summer cottages along Lake Kegonsa in the town of Dunn being converted to transient and tourist lodging.
- b. Provide more information on the Public Health Madison-Dane County (PHMDC) licensing program and standards. (Info available, [here](#))
- c. Capacity limits under the approved residential sanitary permit limits the extent of use (this is less of an issue if the property is on public sanitary sewer).
- d. The towns of Vermont and Dunn have their own ‘short-term rentals’ licensing ordinances, perhaps among others.
- e. A local licensing program could help better manage these uses, but would also present administrative challenges and costs.
- f. State protections for short term rentals may tie the hands of local governments to some extent (state requirements should be clearer and guidance provided broadly to local decision makers).
- g. Explore ways to address the density of transient or tourist lodging operations by setting limits on the total number of locations allowed within a certain area.
- h. It was noted that the town of Dunn applies the ‘7-28 day minimum stay/180-days per 365 consecutive days’ limitations which are some of the only regulations authorized under Wisconsin State Statute.
- i. City of Madison regulations pertaining to owner occupancy should be referenced. (It was noted that the City uses the Granicus application to manage, administer, and monitor listings within their jurisdiction.)

2. *Wedding Barns.* While interest in the topic has somewhat receded for the time being, wedding barns and party barns remain a popular rural land use. The ordinance doesn't explicitly define 'wedding barns' or 'party barns', but rather the use is considered in the context of other uses currently defined in our ordinance. Examples of similar uses recognized in the county ordinance include the following: 'agricultural entertainment'; 'indoor entertainment or assembly;' and 'outdoor assembly events.' The appropriate zoning and/or conditional use requirements are contingent on the specific operational parameters of a given proposal (e.g. how many days per year the use occurs, whether or not it's conducted inside or outside, and whether or not it's related to agriculture).

One possible amendment could be to define the use more precisely and establish detailed application requirements. For example, standards and criteria for detailed site and operations plans providing information on such things as sufficient ingress/egress, parking, outdoor lighting, noise, hours of operation, etc.

One comment raised at the meeting related to how the ordinance could or should be designed in such a way as to enable enterprising property owners with existing agricultural facilities on their property to realize some degree of economic benefit from such structures, support rural entrepreneurship, while still ensuring public safety and the interests of neighbors. This could allow another source of sorely needed income for farmers and other rural property owners. Currently, those with existing agricultural facilities where a connection exists between the proposal and existing agricultural use may utilize *agricultural entertainment* as either a permitted or conditional use, depending on the specific activity and how many days per year it occurs, and other cases may necessitate a rezone or CUP to ensure compliance with the ordinance, public safety, and the interests of neighbors.

3. *Sanitary Fixtures in Accessory Buildings.* Sanitary fixtures (bathrooms) in accessory buildings is a recurring item of interest by property owners in Dane County. The issue of sanitary fixtures in accessory buildings was first addressed in a 2011 zoning ordinance amendment after soliciting feedback from towns. Opinions varied on the issue, with some towns vehemently against allowing sanitary fixtures, and others in support.

One of the main concerns has been that sanitary fixtures can facilitate residential or even commercial use of an accessory structure. The current code requirements allow sanitary fixtures only via a Conditional Use Permit.

The following comments were made at the meeting:

- a. If sanitary fixtures are allowed in accessory buildings, there needs to be a means of future tracking to make sure they don't evolve into more intensive prohibited uses, e.g. commercial or residential uses. Periodic inspection should be part of such approvals.
- b. The differences between agricultural and residential accessory buildings should be made clearer, emphasizing that they're primarily intended for storage and working purposes, not for living space. Make it more evident what is allowed and not allowed.

- c. It should be made more evident that sanitary fixtures (plumbing) are not allowed in accessory buildings, perhaps as part of the zoning permit application; it may not be evident to property owners that such facilities are not allowed, or are only allowed by way of an approved CUP.
 - d. Sanitary fixtures are prohibited in accessory buildings, but not necessarily running water and floor drains 'daylighting' to the outside.
 - e. Criteria should be added to the ordinance for granting CUPs for sanitary fixtures in accessory buildings.
4. *Accessory Dwelling Units (ADUs)*. An accessory dwelling unit is defined as a second dwelling unit on a property with an existing principal dwelling unit. There are two types of ADUs: attached (as in attached to the primary residence), and detached (freestanding structure). There are a number of [requirements that apply to ADUs](#), including size limitations (800 sq. ft.). A helpful guide to ADUs is available, [here](#).

Attached ADUs are listed as a conditional use in all of the county's residential districts, while detached ADUs are listed as conditional use in only a few of them (TFR-08, MFR-08, HAM-R, HAM-M, GC).

The following comment and questions about ADUs were raised at the meeting:

- a. *Comment:* More education is needed on this topic.
 - b. *Question:* What parameters exist for when ADUs could or should be allowed as a permitted or conditional use?
Answer: Whether allowed as a permitted or conditional use will vary depending on the type of ADU and zoning district. The town's policies for residential development may also play a factor. The special requirements for ADUs listed above in s. 10.103(1) apply to all ADUs, regardless of the district and whether they are allowed by CUP or as a permitted use.
 - c. *Question:* If allowed by CUP, would an ADU continue upon sale of property?
Answer: Yes, unless the use discontinues and is inactive for whatever reason for more than one consecutive year, or is otherwise conditioned by way of CUP approval to terminate upon sale or a set future date, it would continue upon sale of the property.
 - d. *Question:* Could towns place a condition that an ADU CUP would expire upon sale of the property?
Answer: Yes.
5. *Single-Family v. Two-Family/Multi-Family Residential Structures*. Somewhat related to the preceding topic of ADUs, county staff are more frequently being presented with zoning permit applications for new single-family residences designed with relatively independent, dedicated living quarters for family members, such as aging parents or young adult children who have moved back home. There is increased community interest in such living arrangements, which arguably have broader societal benefits.

However, there are times when the proposed separate living quarters become so separate and distinct that it begins to resemble a duplex. This places county staff in a difficult position when reviewing otherwise straightforward zoning permit requests. In order to address the situation, the

zoning administrator must make a determination as to whether or not a proposed structure qualifies as a single family structure under applicable ordinance definitions.

The following are examples of factors considered in an administrative determination:

- a. Multiple kitchens are allowed in single-family residences. Note that additional kitchens may be required for religious practices or for entertaining purposes.
- b. A single-family residence will have a common entrance that provides access to all of the structure. Note that two exits (means of egress) are required as part of the building code. The building design and the location of the doorways must be arranged in a way to clearly show a single common entrance.
- c. A single-family residence will have one common garage with direct access to the residence.
- d. A single-family residence will have one set of utilities (e.g. well, electric service, gas service) and one address. Note that multiple furnaces may be needed due to house design.
- e. If a house design has the potential of being used as two separate living spaces, appropriate conditions could be placed on the zoning permit to limit expanded use.

The department is currently looking at ways to make a clearer distinction between single-family and two-family/multi-family living quarters under a single roof, with the objective being to accommodate increased community interest in extended family cohabitation, while still ensuring compliance with applicable land use regulations. Such administrative considerations could serve as the basis for a possible ordinance amendment to encode the provisions and clarify the requirements.

6. *Mini-Warehouses*. The design and function of mini-warehouses (also commonly referred to as self-storage facilities) has changed over time. The demand for storing surplus stuff has only increased in recent years. Mini-warehouses can be seen as a relatively low-risk, low-cost real estate investment option for developers or property owners. While they previously used to be low-density, single-story structures with a smaller number of storage units, especially in the rural areas or on the urban fringes, some proposals have expanded into multi-story, higher density facilities with numerous units, elevators, and climate controls.

Parking requirements have been identified as a particular issue needing revision. The ordinance currently requires one parking space for each storage unit, which may be directly in front of each unit entrance. However, with a multi-story warehouse with numerous units, one parking space for each unit would be excessive, increasing the footprint and impervious surface area, especially considering that the traffic volume at any given time at such facilities is typically very low and does not warrant one space per unit. In addition to possibly revising the parking requirements for personal storage facilities, specific application requirements, design standards, and limits on impervious surface area could also be incorporated into a possible ordinance amendment.

7. *Renting of Vacant Land for Outdoor Events*. Some attendees cited the recent occurrence of outdoor celebrations or events taking place on otherwise vacant land, and they inquired about how such activities could be managed. The activities described at the meeting seemed to involve multiple

persons camping on a property, perhaps being used like an outdoor *Airbnb* where the property is rented out for some limited duration for non-residents. Examples cited were in the towns of Cross Plains and Deerfield. Other related situations county staff is aware of include so-called “boondocking” sites, where space is made available to recreational vehicles for overnight or weekend stays.

The uses described during the meeting may or may not fall under the definition of a [campground](#), and would not be defined as an ‘[outdoor assembly event](#)’ given that they may involve fewer than 100 persons and occur fewer than 10 days per year. They similarly may not fall under the definition of ‘[outdoor entertainment](#)’ if they do not occur on a “permanent or ongoing basis.” This issue could be explored further. Specific examples could be cited, characteristics of the use defined, and the scope of secondary impacts assessed to determine if greater regulation is needed and a possible ordinance amendment warranted.

8. *Community Gardens.* As a passive use with a number of community benefits, interest has been expressed in expanding the range of places where community gardens may be permissible. They’re currently only allowed as a permitted use in a [few zoning districts](#). Community gardens could conceivably be allowed and exist compatibly in a broader range of zoning districts, within a range of reasonable parameters that could be defined in a future ordinance amendment.

The following questions were raised at the meeting:

- a. *Question:* Could community gardens conceivably be allowed within rights-of-way (ROW)?
Answer: Perhaps it would depend on the type, functional classification, and jurisdiction of the ROW. Care would need to be taken to prevent community garden plantings from obstructing vision triangles and lines of sight along roadways, other ROWs, and at intersections, and safe access to the gardens would need to be ensured.
 - b. *Hypothetical Question:* Would or could there be a requirement for portable community toilets to be located at community gardens, perhaps of a particular size or type?
 - c. *Question:* Would simple hoop-houses and small greenhouses fall within the definition of a community garden and be allowed within some parameters in certain zoning districts?
Answer: If they were used by more than one person or family, then they would fall under the definition of a community garden. As such, they would currently be limited to the handful of zoning districts in which they’re currently allowed, unless their use is expanded via an ordinance amendment. Also, depending on their size, greenhouses and hoop houses may require a zoning permit to ensure they meet applicable requirements (e.g. setbacks, height limitations, etc.).
9. *Complete Applications and Changes to Zoning Petitions.* After a prospective applicant has consulted with the respective town (if required by the town), they must submit a formal application to the Dane County Planning and Development Department. The application is then forwarded to the town to initiate its review process.

The point was made by town officials at the meeting that applications should be as complete as possible in order to initiate the formal review process. When applications do not include enough information to conduct a thorough review, supplemental information must be requested. This can lead to delays and confusion. This is an issue that department staff are familiar with and working to address. Ultimately, town and county decision makers should have all the facts and details needed to make informed decisions. If or when additional information is needed, that information should be shared widely with all parties prior to decisions by either the town or county.

A comment was made that towns should have the ability to accept or reject any changes that may be made to a zoning petition after the county ZLR committee takes action. It's important to note that the committee will not take action on a zoning petition until the town has done so (or if the town indicates it does not intend to take action). Rezoning and Conditional Use Permit petitions require approval by both the town and county. Either the town or the county can place conditions of approval on such petitions which may be necessary to ensure compliance with town/county plan policies, or to meet required standards for approval (CUPs). Department staff are committed to staying in regular contact with town officials and applicants in advance of ZLR action to make sure any changes to petitions and proposed conditions of approval are acceptable to the towns.

10. *Commercial Solar Installations.* Commercial (i.e. non-residential scale) renewable energy generation facilities such as wind turbines, solar farms (photovoltaic [PV] systems), and manure digesters have been rapidly increasing in Dane County, throughout the state, and nationally. Solar farms in particular have quickly increased in number, and examples of varying sizes and energy production levels can be cited throughout the county in numerous towns.

Renewable electric generating facilities are allowed almost exclusively as a conditional use in a number of zoning districts, primarily in the farmland preservation, transitional/rural mixed-use, heavy commercial, and manufacturing/industrial districts. The only district in which they're allowed as a permitted use (along with non-renewable generating facilities) is in the MI Manufacturing/Industrial zoning district. Dane County's zoning jurisdiction applies to facilities generating less than 100 megawatts (MWs). Anything over 100MW falls under the regulatory purview of Wisconsin's Public Service Commission (PSC).

There are a number of towns in Dane County that also have their own ordinances regulating commercial solar energy facilities. The example was cited in the meeting of the Town of Dunkirk Solar Energy System Permit ordinance regulating solar facilities between 1,000 kilowatts (kW) up to 100 MWs facilities. Town representatives in attendance expressed an interest in receiving more information on how commercial solar facilities are regulated across the various levels of government, specifically by the towns, county, and state.

The updated draft of the Dane County Farmland Preservation Plan (FPP) includes the following policies for renewable energy facilities in farmland preservation areas:

1. To minimize the need for new electrical transmission lines, locate new renewable energy installations as close as possible to existing transmission facilities.

2. Where practical, manage density and size of utility-scale installations to minimize impacts to adjoining agricultural land uses and rural character.
3. Except where required for aviation or other safety concerns, encourage setbacks, vegetative screening, berms, or other practices to minimize visual impact.
4. Encourage multiple- or dual-use facilities that allow for agricultural, natural resource, habitat and/or soil and water conservation uses to coexist with energy generation.
5. Arrange energy infrastructure, fencing and berms to allow for equipment movement, habitat, wildlife corridors and pervious cover to minimize runoff.
6. Make sure all installations comply with county erosion control and stormwater standards during construction, operational, maintenance and decommissioning phases.
7. Encourage adaptive reuse of operating or closed mineral extraction or other rural industrial sites for renewable energy use.
8. To the extent possible, follow the siting criteria for this plan, to avoid productive farm soils.
9. Make sure landscaping and other vegetation is maintained to continue to serve its intended purpose and does not create sources for invasive species.
10. Require decommissioning plans for all renewable energy facilities, with financial instruments sufficient to cover the cost of equipment removal and reclamation. Lands should be reclaimed to agricultural or natural resource use.

Some of these policies could serve as a conceptual basis for an ordinance amendment addressing new renewable electric generating facility proposals.

11. ***Conditional Use Permit Appeals to the Dane County Board of Adjustment.*** As noted on the meeting flyer, another issue raised at the meeting related to conditional use permits (CUPs), specifically appeals of CUP decisions to the Board of Adjustment (BOA).

CUP appeals can be contentious and costly in terms of time and resources needed to process them. Feedback obtained from individual towns and the Dane County Towns Association executive board demonstrated significant support for having appeals of CUP decisions go directly to circuit court, as provided for in state law. Toward that end, a Chapter 10 text amendment is in the process of being drafted and introduced to make this change. Note that towns will have the opportunity to act on the amendment prior to any action by the ZLR Committee or County Board.

Closing Comments and Next Steps. As noted, this meeting was intended to be a listening session and open discussion on the zoning ordinance. No decisions were made. This is only a first step: we anticipate a second meeting on this topic later in the year after towns have a chance to further discuss within their own jurisdiction any comments they would like to make on the zoning ordinance.

Attachment A

Feedback/Listening Session on the Dane County Zoning Ordinance*

Thursday, July 28, 2022 @ 7:00 p.m. (In-Person)

Town of Dunn Hall (Meeting in Highway Garage) 4156 County Road B, McFarland, WI

AGENDA

1. Welcome & Introductions
 - a. Announcement of New Assistant Zoning Administrator Rachel Holloway
2. Overview of Meeting Objectives
 - a. Brief Overview of Comprehensive Revision of the Zoning Ordinance in 2019
 - b. Intent of this Meeting and Process
 - c. Meeting Parameters (see below)
 - d. *Some* Examples of County Staff Ideas
3. Brainstorming & Discussion of Ideas from Town Officials
4. Conditional Use Permit (CUP) Appeals and Dane County Board of Adjustment (BOA)
5. Closing Comments & Next Steps

*NOTE: This meeting is jointly sponsored by the Dane County Towns Association (DCTA) and the Dane County Planning and Development Department.

MEETING PARAMETERS

1. Please keep comments focused on the Zoning Ordinance.
2. Please limit comments to less than three (3) minutes and try to avoid restating points already made (enables all ideas to be expressed and efficient use our limited time).
3. As always, perhaps it goes without saying, please remain respectful of everyone's ideas and refrain from interrupting others while they're speaking.
4. We'll aim to conclude by or before 9:00 p.m. (if reasonably possible).

THANK YOU!

CONTACT INFORMATION

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*DCPDD = Dane County Planning & Development Department

**DCTA = Dane County Towns Association

Feedback/Listening Session on Dane County Zoning Ordinance

WHEN: Thursday, July 28, 2022 from 7:00 to 9:00 p.m.

WHERE: Town of Dunn Hall (IN-PERSON) @ 4156 County Road B, McFarland, WI 53558

*This event is jointly sponsored by the
Dane County Planning & Development
Department and the Dane County Towns
Association (DCTA).*

**For questions, contact either of
the following:**

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This meeting will cover:

1. Listening session on the new Dane County Zoning Code (Ch. 10, D.C. Ords.). The zoning code had an overhaul in 2019. How is it going with the new code? Are there areas for improvement or issues that should be addressed? Comments may also be taken on the Dane County Land Division/Subdivision Ordinance (Ch. 75, D.C. Ords.), as time permits.
2. Learn about the new Assistant Zoning Administrator in charge of coordinating zoning petitions.
3. Discuss changing how Conditional Use Permit (CUP) appeals to the Dane County Board of Adjustment (BOA) are heard. Would it be better if appeals went directly to circuit court instead of the BOA?

While this meeting is intended primarily for town government officials, particularly plan commission and town board members, everyone is welcome to attend. There will be a brief, informal presentation with time for comments, discussion, questions, and answers with Dane County and DCTA staff.

