

October 15, 2013

TO: Washington Island Zoning & Planning Committee
cc: Town Board

FROM: Mike Davis & Susan Buchanan
Birchwood Farms
998 Lake View Road
Washington Island, WI 54246



RE: Rezoning Request – 1350 Airport Road
Rezone 1.8 acres from GA to CC for purposes of opening a retail store,
special event facility, and supportive parking lot

We are strong supporters of efforts to foster economic development on the Island and applaud those who are investing and working to help meet this important goal. However, we feel strongly that this goal can be met within current zoning and land use plans, which represent the consensus of the majority of Islanders for appropriate development and preservation of our unique, rural way of life.

We are opposed to this zoning change because it will disrupt the consensus developed by Islanders regarding land use and will set a precedent that will have serious negative consequences for the future. The Island has ample land that is zoned commercial for retail stores and other permitted commercial uses that is not being utilized. The Island should concentrate on fostering appropriate commercial development in those areas so that we have a viable and dynamic commercial core, not by creating new ones scattered across the Island through zoning changes.

This property, as is our 40 acre GA zoned parcel, was purchased as GA zoned property, with certain uses permitted within that zoning. If this request is approved, are we now saying that the zoning rules for Island property no longer matter and can just be changed to suit the wishes of current and new owners so that they can have expanded uses?

There must be an overriding public benefit to create a spot zone, such as this proposed commercial property surrounded by GA zoned land, and that criteria will not be met with this zoning change. The intent of the new owners is commendable, but what if their plans or owners change? Any use permitted within a CC zone can be implemented and the Island may end up with a future commercial use that is not desirable in an area outside our commercial core.

The most serious consequence will be the legal precedent that will be set by allowing rezoning on the Island, which up to this point in time has not been crossed. If this request is approved, what will be the legal basis for turning down other requests for rezoning? If approved, then we fully expect that as we make plans to expand our Birchwood Farms business on our land, that we too can split off a portion of our property and rezone for commercial uses, such as a retail store, that are not allowed under the GA zone. Others should also have the right to do so, and if denied, may take legal action that is costly to taxpayers to be given the same right to rezone part of their GA property to commercial.

Thank you for your considering our views.

Zoning

From: **winktoomey@yahoo.com**

Sent: Sun 10/20/13 10:02 AM

To: mkickbush@hotmail.com (mkickbush@hotmail.com)

Mike, my husband and I live at 1370 Airport Rd. I am concerned about the retail proposed for that corner. Helene did a good job of presenting her ideas when we spoke, but did not show that the store would do any good at that location. I think having a shop on Main Rd. would improve the area and be an example for others to work on their presentation. The other concern is the special events facility proposed. We already have three or four facilities that are not booked full from spring thru fall. Thanks Winkie Reese

Sent from my y hav

RE: Meyer Petition Questions

From: **SWM Law Office** (SWMLawOffice@swm-law.com)
Sent: Tue 10/22/13 4:03 PM
To: Michael Kickbush (mkickbush@hotmail.com)

You may certainly share this information with the Town Board.

William J. Wolske

SLATKY, WOLSKE & MEHN

510 Main Street

P.O. Box 146

Kewaunee, WI 54216

920/388-2333

From: Michael Kickbush [mailto:mkickbush@hotmail.com]
Sent: Tuesday, October 22, 2013 10:56 AM
To: SWM Law Office
Subject: RE: Meyer Petition Questions

Should this information be passed along to the town board to consider for their recommendation as well?

Mike

From: SWMLawOffice@swm-law.com
To: mkickbush@hotmail.com

Subject: RE: Meyer Petition Questions
Date: Mon, 21 Oct 2013 21:52:17 +0000

This information that you submitted can certainly be provided at the public meeting.

William J. Wolske

SLATKY, WOLSKE & MEHN

510 Main Street

P.O. Box 146

Kewaunee, WI 54216

920/388-2333

From: Michael Kickbush [<mailto:mkickbush@hotmail.com>]
Sent: Monday, October 21, 2013 3:48 PM
To: SWM Law Office
Subject: FW: Meyer Petition Questions

See below, let me know if this is ok to present at tonight's meeting.

Mike

From: mgoode@co.door.wi.us
To: mkickbush@hotmail.com
CC: District21@co.door.wi.us; kmiller@co.door.wi.us
Date: Fri, 18 Oct 2013 10:48:14 -0500
Subject: RE: Meyer Petition Questions

My response in orange. Starting to run out of colors here. ☺

Mariah Goode, Director

Door County Planning and Zoning Department

Door County Government Center

421 Nebraska Street

Sturgeon Bay, WI 54235

Phone: (920) 746-2323

FAX: (920) 746-2387

E-mail: mgoode@co.door.wi.us

Website: <http://map.co.door.wi.us/planning>

From: Michael Kickbush [<mailto:mkickbush@hotmail.com>]

Sent: Friday, October 18, 2013 10:37 AM

To: GOODE, MARIAH

Cc: Gunnlaugsson, Joel; Miller, Kay

Subject: RE: Meyer Petition Questions

Please see the grey area below under question 5.

Mike

From: mgoode@co.door.wi.us

To: mkickbush@hotmail.com

CC: District21@co.door.wi.us; kmillier@co.door.wi.us

Date: Fri, 18 Oct 2013 10:20:18 -0500

Subject: RE: Meyer Petition Questions

Mike –

My answers to your questions in purple are in green.

Mariah Goode, Director

Door County Planning and Zoning Department

Door County Government Center

421 Nebraska Street

Sturgeon Bay, WI 54235

Phone: (920) 746-2323

FAX: (920) 746-2387

E-mail: mgoode@co.door.wi.us

Website: <http://map.co.door.wi.us/planning>

From: Michael Kickbush [<mailto:mkickbush@hotmail.com>]

Sent: Friday, October 18, 2013 10:13 AM

To: GOODE, MARIAH

Cc: Gunnlaugsson, Joel; Miller, Kay

Subject: RE: Meyer Petition Questions

Mariah,

A few more questions about # 5 below in purple.

From: mgoode@co.door.wi.us

To: mkickbush@hotmail.com

CC: District21@co.door.wi.us; kmiller@co.door.wi.us

Date: Fri, 18 Oct 2013 09:31:50 -0500

Subject: RE: Meyer Petition Questions

Hi, Mike –

My replies to your most recent questions (in goldenrod) are in red.

Hope this helps!

Mariah Goode, Director

Door County Planning and Zoning Department

Door County Government Center

421 Nebraska Street

Sturgeon Bay, WI 54235

Phone: (920) 746-2323

FAX: (920) 746-2387

E-mail: mgoode@co.door.wi.us

Website: <http://map.co.door.wi.us/planning>

From: Michael Kickbush [<mailto:mkickbush@hotmail.com>]

Sent: Friday, October 18, 2013 8:51 AM

To: GOODE, MARIAH

Cc: Gunnlaugsson, Joel; Miller, Kay

Subject: RE: Meyer Petition Questions

Mariah,

Thanks for the prompt response, a few follow up questions to #5 & #6 in **goldenrod** below.

Thanks,

Mike

From: mgoode@co.door.wi.us

To: mkickbush@hotmail.com

CC: District21@co.door.wi.us; kmiller@co.door.wi.us

Date: Wed, 16 Oct 2013 15:16:13 -0500

Subject: RE: Meyer Petition Questions

Hi, Mike –

I hadn't realized the WIZAP had already met to discuss this matter.

Our responses are in blue, next to your questions, below.

Please let us know if you have any additional questions.

Thanks!

Mariah

From: Michael Kickbush [<mailto:mkickbush@hotmail.com>]
Sent: Wednesday, October 16, 2013 9:35 AM
To: GOODE, MARIAH; Miller, Kay
Subject: Meyer Petition Questions

Good Morning,

Below are some questions that WIZAP committee members had about the upcoming petitions.

Mike

1. Is it still the case that we are to consider "the fact of rezoning" over and above the proposed use made by the applicant? (Due to the possibility that the proposed use may be changed, or be in existence for a short time, etc. through no fault of the applicant?) We've had a case in the past where a Light Industrial rezoning was granted to make a proposed gas station possible. But then, someone else built a gas station elsewhere and the applicant never did build his. We are now left with this odd little spot of LI zoning. **Technically, the rezoning and conditional use permit should be considered separately. In reality, that is very difficult to do, especially in a case where the applicants are clearly serious about pursuing the proposed project for which the rezoning is necessary (they've turned in both applications, paid both fees, asked to schedule the hearings for the same date, etc.). Perhaps concerns could be alleviated by the subject you raise in question #8, below.**

2. If we are to consider the "fact" of rezoning, why are the majority of your statements (ie. from the Goals listed from the Comp. Plan) in the Staff Analysis concerned with the proposed use?

Why wasn't it mentioned that on p. 41 (of the Comp. Plan) regarding the Core Areas it states that "... commercial, residential, or mixed-use, should be directed to these areas"?

On p. 42 there is a bullet list of items, some of which are germane to this rezoning request, ie. "...encouraging future commercial...uses to locate in the Core Areas"; and "communities should strive to maintain a distinct "edge" to their built-up areas."; and "Encourage infill development and redevelopment." Why were these not mentioned in your Staff Analysis?

On p. 43 under "Commercial" - there is a paragraph that could also be taken under consideration. Why were these not mentioned in the Staff Analysis?

What should our committee address & stress - the proposed use or the rezoning?

The difficulty for our committee is that it appears from your Staff Analysis that the proposed use is the main consideration and not the fact of

rezoning. The staff report copy you have should be considered a rough draft. The intention is to have two final staff reports, one regarding the rezoning and one regarding the proposed project. Staff reports typically just include the future land use description for the property in question, any relevant goals/objectives/action items, and some zoning-related information. They are not an exhaustive analysis of all future land use designations.

3. Does our local Future Land Use Map take precedence over the general goals of the Comp. Plan stated in your Staff Analysis? Again, the staff report is a draft. Also, note that state statutes say that zoning decisions need to be consistent with the comprehensive plan, "consistent with" being defined as "furthers or does not contradict the objectives, goals, and policies contained in the comprehensive plan." That definition was added to the statutes about three years ago. We at the staff level have interpreted that to mean that the objectives, goals, etc. are equally if not more important than the future land use map, since the map isn't even mentioned in the definition. There is as of yet no case law regarding the "consistent with" definition.

4. Does a temporary use require an Assembly Hall Conditional Use Permit? A temporary use does not require a permit and is limited to a total of ten days in a calendar year.

5. On Washington Island, is an Assembly Hall Conditional Use allowed in General Agriculture Zoning? It is allowed by Conditional Use Permit in the GA zoning district, however assembly halls in that district shall only be allowed in building existing at the time of adoption of that particular section of the ordinance, and located on parcels with at least 20 acres.

Does this mean that in order to have an assembly hall conditional use on that parcel, it needs to be rezoned to a commercial zoning? If so, what is the minimum amount of land needed to accomplish this? Is it just the area of the assembly hall (40'X100" tent) or does it have to be the entire 1.804 acres? An assembly hall is only allowed in new structures in the CC, MC, and RC zoning districts (in the other districts where they are allowed it has to go into an existing structure), so yes, a rezoning is necessary in order to authorize an assembly hall on the area proposed to be used as such on this property. There is no minimum amount of land required to establish an assembly hall in those districts, as long as all ordinance requirements can be met, but the parcel needs to at least be a grandfathered, buildable parcel. There is also no maximum on the amount of land that may be used. In theory, just the footprint area of the assembly hall

could be rezoned, but that could make things really confusing and complicated, and I'm not sure what would be accomplished by rezoning just that area. I think that, in this situation, there also might be reluctance to rezone an area that is smaller than the minimum lot size requirement for new lots in the requested district.

According to the survey, the new total of the combined parcels (#028-02-36342943A1 & #028-02-36342943B) will be 21.235 Acres. If 1.8 acres is removed from the new parcel for the proposed commercial zoning, won't that create a nonconforming lot of less than 20 acres as a remainder? And if only 1.235 acres is removed to leave a conforming 20 acre GA lot, won't that still be less than the minimum 1.4 acre lot size on Washington Island because of our overlay? The rezoning does not create a new lot; it just creates an area within a lot that is differently zoned than the rest of the lot. (Having a lot with more than one zoning district is not all that uncommon.) In fact, as your questions allude to, the proposed portion of the lot to potentially be rezoned will never be able to be split off as its own parcel, if the remainder stays zoned GA, since the remaining acreage after such a split wouldn't comply with GA lot size requirements for new lots.

So the "reluctance" you refer to in your previous response means that a minimum lot size requirement is not being applied here and the amount of area needed to fulfill the petitioners request could be limited to just the footprint of the buildings? I was just noting that there is sometimes reluctance to rezone an area if the area being rezoned couldn't meet the minimum lot size standards for the requested/new district. As you've correctly discerned, rezoning the area requested will actually make it impossible to split the parcel, as long as the GA zoning remains on the rest of the parcel. As I've said previously, rezoning just the footprint of the buildings could be confusing and complicate things, and I'm not sure what would be accomplished by doing so.

Is the same true of the proposed 35'x60' 2 story building? In order for that to be used as proposed, does the entire 1.804 acres have to be rezoned or just the area of the footprint of the building? Again, in theory, just the footprint of the proposed 35x60 building could be rezoned to commercial (in order to allow for retail sales from that building), but I'm not sure what that would accomplish and/or prevent.

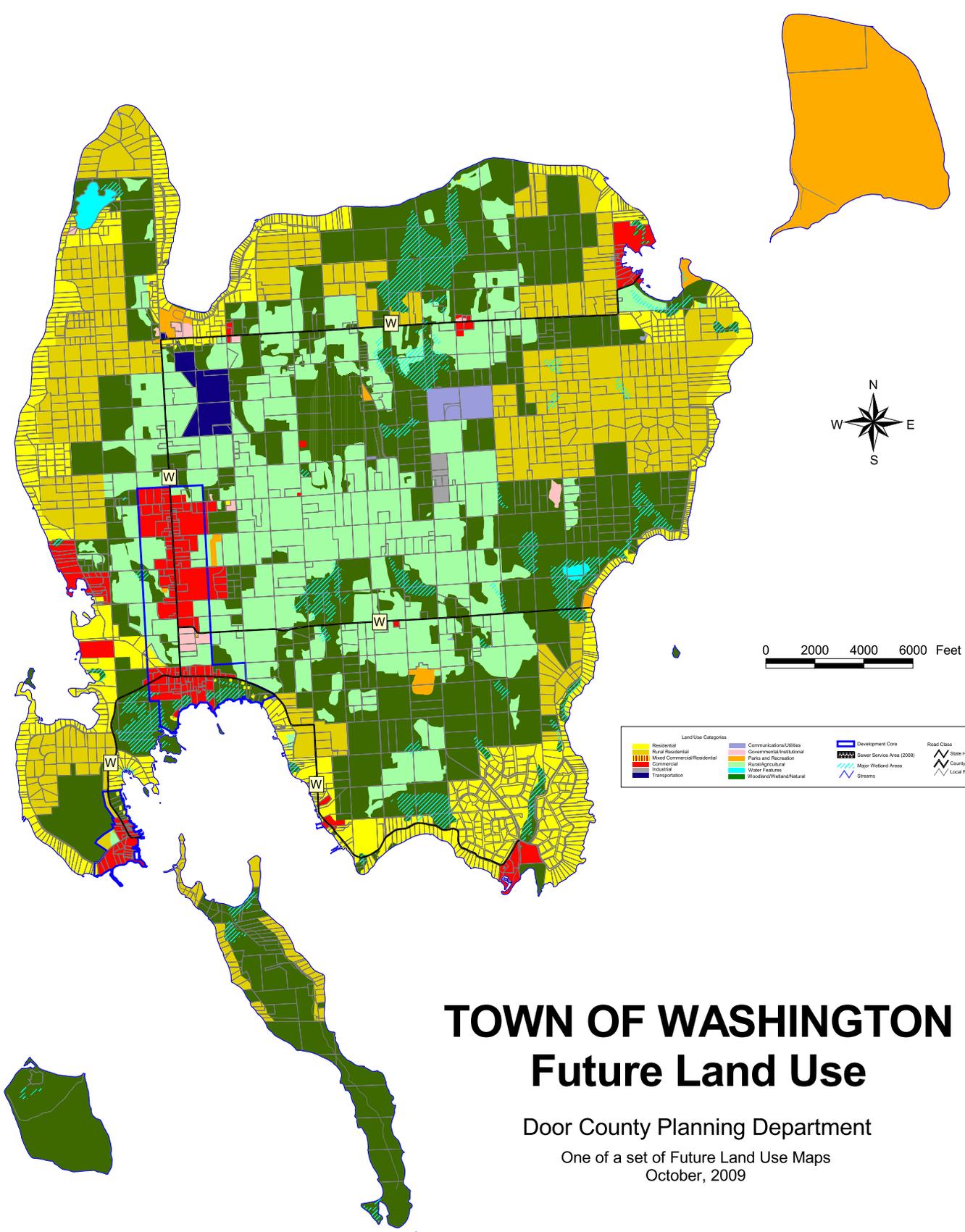
What is the minimum required parking for a 35'x60' building? Parking requirements are determined by the land use in question and its size. In this case, the required parking will be determined based on the area requested for retail purposes should that portion of the property be rezoned. The required parking for retail is 1 space for 200 square feet of primary floor area. This structure is not going to be used for assembly hall purposes.

What is the required amount of parking for the assembly hall conditional use? Is a parking area required to be zoned the same as a proposed use? We will determine the maximum capacity of the assembly hall (based on applicant-provided information and/or any relevant state standards, etc.) and then divide the number by three to determine the required number of parking spaces. Technically, if on the same lot as the use it serves, parking is not required to be

zoned the same as the district within which the use is located. Again, though, it can make things more (and unnecessarily?) complicated if they are in different zoning districts, so we often advise people to have the parking be in the same zoning district as the use it is serving.

7. By definition in Chapter 2 of the Door Co. Zoning Ordinance, Commercial Center Zoning (CC), is intended to provide centers for commercial and mixed use development and maintain the vitality of Door Co's (existing) Commercial Centers. How is the proposed Commercial Center Zoning that the County is recommending help maintain the vitality of existing Commercial Centers? [The county recommended CC rather than MC as the CC district allows for less uses than the MC district.](#)

8. Can a permanent deed restriction be placed on a parcel and enforced to assure no unintended uses occur in the future? [The property owner could offer to place a deed restriction on the property.](#)



TOWN OF WASHINGTON Future Land Use

Door County Planning Department
One of a set of Future Land Use Maps
October, 2009