

**TOWN OF WINDSOR  
TOWN BOARD RESOLUTION 2014-43**

**RESOLUTION APPROVING REZONE FROM ETZ AG-35ac TO ETZ ER-1  
TO BRING THE NON-CONFORMING PROPERTY INTO COMPLIANCE AND  
ALLOW FOR REDUCED SETBACKS FOR SWIMMING POOL**

**[Michael Peterson and Dana Diedrich, Petitioners and Owners of 3901 Aric Avenue,  
Town of Windsor, Dane County, Wisconsin]**

**RECITALS**

**WHEREAS**, Michael Peterson and Dana Diedrich, as petitioners and owners (“Petitioners”) of 3901 Aric Avenue, Town of Windsor, Dane County, Wisconsin (“Property”) are requesting a rezone of the Property from ETZ AG-35ac to ETZ ER-1 in order to bring the non-conforming property into compliance with the applicable zoning code and allow for reduced setbacks that will allow Petitioners to locate a swimming pool at their preferred location;

**WHEREAS**, the Property is located in the ETZ District created by the City of Sun Prairie and the Town of Windsor;

**WHEREAS**, the Town Planner has reviewed the request and prepared a Staff Report dated June 30, 2014 (“Staff Report”) recommending approval, subject to certain conditions specified in the Staff Report;

**WHEREAS**, following review of the rezone request and Staff Report, and consideration of public input from the public hearing held on July 15, 2014, the Plan Commission recommended approval of same, subject to those conditions specified in the Plan Commission Resolution 2014-18;

**WHEREAS**, following review of same, the Town Board hereby recommends approval, subject to those conditions set forth herein.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Windsor as follows:

A. The Town Board hereby approves the rezone of 3901 Aric Avenue from ETZ AG-35ac to ETZ ER-1, subject to the following conditions:

1. Subject to the Petitioners receiving approval of the rezone from ETZ AG-35ac to ETZ ER-1 from the City of Sun Prairie.
2. Subject to Petitioners reimbursing the Town of Windsor for all costs and expenses incurred by Windsor in connection with the review and approval of the rezone, including, but not limited to, the cost of preparation of the acknowledgement needed for Petitioners to commence construction of the

swimming pool, and for professional services incurred by the Town of Windsor for the review and preparation of required documents, attendance at meetings or other related professional services.

B. It is the Petitioner's obligation to timely satisfy those conditions adopted by the Town Board, and to provide satisfactory verification of compliance to the Town. To provide time necessary for due diligence review, all submissions to the Town for determinations of compliance shall be made at least ten (10) business days prior to the date upon which verification of compliance is required.

C. The Town Board's approval expires one hundred eighty (180) days from the date of adoption of this Resolution, and all conditions set forth herein must be satisfied prior to expiration of this approval or the approval shall be deemed null and void. Time is of the essence.

The above and foregoing Resolution was duly adopted at the regular meeting of the Town Board of the Town of Windsor on the 17th day of July, 2014.

**TOWN OF WINDSOR**

Robert E. Wipperfurth  
Robert E. Wipperfurth, Town Chairman

Excused Absence  
Donald G. Madelung, Town Supervisor

Bruce Stravinski  
Bruce Stravinski, Town Supervisor

Alan Buchner  
Alan Buchner, Town Supervisor

Excused Absence  
Monica M. Smith, Town Supervisor

Attest:  
Christine Capstran  
Christine Capstran  
Clerk

**TO:** Town of Windsor Plan Commission

**CC:** Robert Wipperfurth, Chairman  
Tina Butteris, Office Manager  
Amy Anderson Schweppe, Planning & Development Coordinator  
Kevin Richardson, Engineer  
Constance Anderson, Attorney

**FROM:** Jamie Rybarczyk, Planning Consultant

**RPT DATE:** June 30, 2014

**MTG DATE:** July 15, 2014

**FOTH FILE:** 13W027.01/29

**RE:** **Michael Peterson & Dana Diedrich – Rezone**

**BACKGROUND:**

1. Petitioner/Property Owner: Michael Peterson & Dana Diedrich
2. Agent: N/A
3. Location/Address: 3901 Aric Avenue, DeForest, WI 53532
4. Taxkey Number: 068-0910-273-9420-6
5. Area: 1.692 acres
6. Existing Zoning: Agricultural (AG-35)
7. Proposed Zoning: Estate Residential (ER-1)
8. Future Land Use: General Conservation Residential

**OVERVIEW:**

The property is currently zoned Agricultural (AG-35). Per the Agricultural (AG-35) district the side yard setback requirement is 50'. The petitioners wish to build a swimming pool at a preferred location does not meet the required side yard setback. Originally the petitioners requested a variance for the side yard setback requirement; however, the situation did not meet the legal standards for a variance. In addition, the current property is 1.692 acres in area which is non-conforming to the minimum lot area in the Agricultural (AG-35) district. As a result, Staff recommended to the petitioners to rezone the property from Agricultural (AG-35) to Estate Residential (ER-1) to bring the non-conforming property into compliance with the applicable zoning district and allow for reduced setbacks so the petitioners may locate the swimming pool at their preferred location. The side yard setback for the Estate Residential (ER-1) is 10'.

The petitioners also requested from the Town of Windsor and City of Sun Prairie early construction of the swimming pool to avoid financial and scheduling penalties by their contractor. To accommodate the petitioner, the Town of Windsor requested the petitioner sign an agreement, prepared by the Town Attorney, stating the petitioners are willing to undertake the risks associated with proceeding and the Town is willing to temporarily forebear its right of enforcement, based on the terms of the agreement. A copy of the agreement is attached herein.

**STAFF RECOMMENDATION:**

Depending on confirmation by the Town of Windsor Plan Commission of the above described comments, the Town of Windsor Plan Commission may take the following action:



## Staff Report

The Town of Windsor Plan Commission recommends to the Town of Windsor Board **Conditional Approval** of the Rezone request for Michael Peterson & Dana Diedrich located at 3901 Aric Avenue, DeForest, WI 53532 subject to the following conditions:

1. Subject to the petitioners receiving approval of the rezone from Agricultural (AG-35) to Estate Residential (ER-1) by the City of Sun Prairie.
2. The petitioner has reimbursed the Town of Windsor for all costs and expenses incurred by Windsor in connection with the review and approval of the CSM, including, but not limited to, the cost of professional services incurred by the Town of Windsor for the review and preparation of required documents, attendance at meetings or other related professional services.

### **COMPREHENSIVE PLAN CONSISTENCY:**

The proposed Rezone is consistent with the Town of Windsor Comprehensive Plan: 2025.

### **ZONING CONSISTENCY:**

The proposed Rezone is consistent with the Sun Prairie-Windsor ETZ Ordinance.

### **EXHIBITS:**

- A. DCiMap
- B. Site Plan
- C. Agreement
- D. Application

# Peterson Property



June 20, 2014

1:1,200

Parcel Number



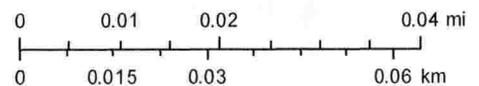
Tax Parcels

House Number

CSM Text

Plat Labels

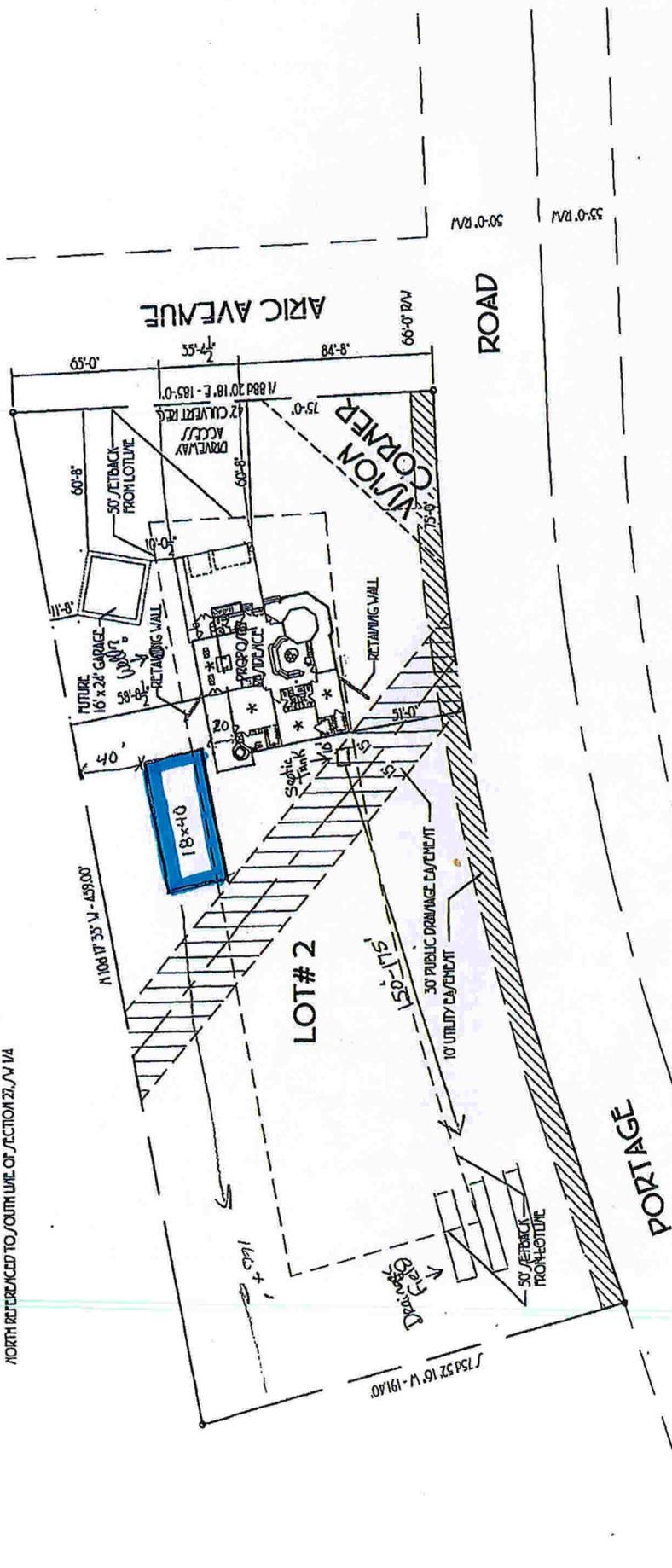
Contours - 2 ft Intervals



Planning  
Administrative  
Geophysical  
Water Resources  
Recreation

Pool

**NORTH**  
NORTH REFERENCED TO SOUTHWEST CORNER OF SECTION 21, T4N 14E



**PROPERTY DESCRIBED AS:**  
 LOT# 2 PETER/OM PLAT, TOWNSHIP OF WINNOR, COUNTY OF DADE,  
 STATE OF FLORIDA  
 LOT# 2 = 75715/SQ. FT. = 1.692 ACRES

**PROPOSED SITE PLAN**

SCALE: 1" = 50'-0"



## **AGREEMENT REGARDING 3901 ARIC AVENUE, WINDSOR, WI**

This Agreement is signed by the Owners of 3901 Aric Avenue, Windsor, WI ("Property") to be effective on June 24, 2014.

### **RECITALS**

**WHEREAS**, the Property is located in the ETZ District created by the City of Sun Prairie and the Town of Windsor;

**WHEREAS**, the Owners acknowledge that the Property is not properly zoned for its use and is subject to certain restrictions that make it difficult for the Owners to locate their swimming pool at their preferred location;

**WHEREAS**, the Owners requested a variance from the restrictions;

**WHEREAS**, the Town is unable to grant the request because the situation presented does not meet the legal standards for a variance, and has so advised the Owners;

**WHEREAS**, the Owners are proceeding with a rezone of the Property and, provided that the rezone is granted, the Property will no longer be subject to the restrictions that prevent the Owners from locating their swimming pool at the preferred location;

**WHEREAS**, the Owners previously arranged for an immediate start of construction of the swimming pool and will incur financial and scheduling penalties if the contractor does not begin the work immediately, rather than waiting to start after approval of the rezone;

**WHEREAS**, the Owners are willing to undertake the risks associated with proceeding and the Town is willing to temporarily forebear its right of enforcement, on the terms set forth herein.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the above recitals, which are incorporated herein by reference, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owners and Town agree as follows:

1. Provided that the Owners proceed promptly and diligently with their application for proper rezoning of the Property, the Town shall temporarily forebear its right to enforce the zoning regulations that prohibit the construction of a swimming pool at the preferred location on the Property. The Town's forbearance shall not exceed sixty (60) days.

2. With full knowledge of the consequences set forth herein, and acknowledging both the foreseeable and unforeseeable risks associated with proceeding with construction on the assumption that the rezone will be granted, Owner agrees to and hereby shall assume full responsibility for the consequences, including but not limited to, the following known risks that arise if the rezone is not be granted prior to expiration of the Town's forbearance and enforcement action becomes necessary:
  - a. The need to remove the pool and restore the Property to its original natural setting, at the sole cost of the Owners.
  - b. The cost of any enforcement action deemed necessary by the Town due to Owners' failure to perform as agreed, including any and all legal, planning, Town employee and other costs incurred by the Town that are in any way associated with such enforcement, as determined by the Town.
  - c. The filing of a lis pendens or other notice of claim against the Property if Owners fail to perform as agreed.
  - d. The costs of restoration, and the right of the Town or private contractors engaged by the Town to enter upon the Property and take such actions as are necessary to restore the Property.
  - e. The right of the Town to place such costs on the tax roll as a special charge, if Owners fail to pay the Town as agreed.
3. The Owners expressly agree to and by signing this Agreement shall undertake the obligations set forth in paragraph 2. Owners waive any right to contest these obligations.
4. This Agreement is entered into voluntarily and with the express understanding that it is a binding legal agreement, and the Owners expressly agree to be bound as set forth herein.
5. This Agreement sets forth the full understanding of the parties as to the subject matter herein, and can only be amended in writing. Oral representations as to the subject matter set forth herein shall not bind either party.
6. No presumptions shall arise due to drafting responsibility. By signing below, each party acknowledges that he or she has reviewed this agreement and obtained such legal advice as deemed necessary, and waives any and all claims associated with a failure to understand the implications of signed this Agreement.

OWNERS:

Dana Diedrich for  
Michael Peterson

Dana Diedrich

TOWN:

Windsor



Contact Information

Applicant:

Name: Michael Peterson & Dana Diedrich  
 Address: 3901 Aric Avenue  
 City, State, Zip: DeForest, WI 53532  
 Phone Number(s): 846-1501  
 Cell Phone(s): 239-1640  
 Email Address(es): svencanbike@gmail.com

Surveyor:

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Phone Number(s): \_\_\_\_\_  
 Cell Phone(s): \_\_\_\_\_  
 Email Address(es): \_\_\_\_\_

Attorney:

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Phone Number(s): \_\_\_\_\_  
 Cell Phone(s): \_\_\_\_\_  
 Email Address(es): \_\_\_\_\_

Owner:

Name: same as applicant  
 Address: \_\_\_\_\_  
 City, State, Zip: see above  
 Phone Number(s): \_\_\_\_\_  
 Cell Phone(s): \_\_\_\_\_  
 Email Address(es): \_\_\_\_\_

Engineer:

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Phone Number(s): \_\_\_\_\_  
 Cell Phone(s): \_\_\_\_\_  
 Email Address(es): \_\_\_\_\_

# Sun Prairie Windsor ETZ Review

**Sun Prairie/Windsor ETZ Rezone Technical Requirements (per Section 13W-11-5(c) of Sun Prairie/Windsor ETZ Regulations)**

Item		Applicant
1	Map of the Subject Property – showing all lands for which zoning is proposed, and all other lands within 200' of the boundaries of the subject property, with the names and addresses of the owners of all lands on said map as the same appear on the current tax records of the City of Sun Prairie and the Town of Windsor. Said map shall clearly indicate the current zoning of the subject property and its environs, and jurisdiction(s) which maintain control. Said map and all its parts and attachments shall be submitted in a form that is reproducible and shall be at a scale of not less than 1" = 800'. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided.	
2	Map of Generalized Location of the Subject Property – in relation to the City and Town as a whole.	✓
3	Written Justification for the Proposed Amendment – the applicant is advised to use the requirements of 13W-11-3(d)(2) as a guide for written statement.	✓