

PLAN COMMISSION MINUTES
December 14, 2020

CALL TO ORDER: Chairman Wolter called the meeting to order at 6:30 pm.

ROLL CALL: Chairman Dean Wolter, Trustee Rep David Baum, Commissioners Tony Laszewski, Bill Shadid, Matt Kimmler and Peter Nilles were in attendance. Commissioner Bob Williams was absent and excused. Also present were Community Development Director Jeff Retzlaff, Associate Planner Emily Zandt and Planning Assistant Lori Johnson.

PUBLIC INPUT: Terry Tschetter, W147 N10451 Wilson Drive, commented that he did not see a condition in the recommendations for the Kinderberg Estates approval regarding the landscape buffer for the east property line. He wants the specific plan tied into the agreement.

APPROVAL OF MINUTES:

MOTION Baum second Kimmler to Approve the Minutes from 11/9/20 and 11/30/20.

MOTION carried unanimously.

Sundance, Inc., agent for Marshall and Diane Peebles, property owners - N96 W18058 County Line Road. Rezoning and Conditional Use Permit applications and site development and building plans for development of the existing multi-tenant retail building for a new Taco Bell restaurant. Planner Retzlaff summarized the proposal and indicated staff is waiting for the traffic study to be completed as requested. He asked that Plan Commission Table the proposal until the January 11, 2021 meeting.

Chairman Wolter opened the public because it had been advertised and notices were sent to adjoining property owners.

Public Hearing was opened at 6:40 pm.

- Chairman Wolter read a comment received from Shirley Engelmann, W180 N9843 Riversbend Circle W- she is concerned with flooding in the area.
- Chairman Wolter read a comment received from Terry Blosser, W180 N9893 Riversbend Circle W, he does not want the development to encroach onto wetland or the waterway.
- Jan Miller, W151 N10297 Windsong Cir W, was concerned with the wetland and flooding in the area.

The Public Hearing was kept open.

MOTION Baum second Kimmler to Table until January 11, 2021.

MOTION carried unanimously.

Kevin H. Behnke, agent for the Apple Works Winery - W179 N12536 Fond du Lac Avenue.

Amendment to Conditional Use Permit No. 01-13 to allow an expansion of the existing business to use of the property as a venue for weddings and other events including a 5,150 sqft building with seating capacity of 125 persons; an outdoor patio with 900-1080 sqft covered shelter and outdoor fireplace; and 35-50 vehicle parking lot. Associate Planner Zandt summarized the proposal.

Public Hearing opened at 6:57 pm.

- Jim Larsky, W132 N11373 Forest Drive, spoke in support of the Behnke family, and their proposal, encouraged PC to pass the CUP, great business and people.
- Kevin Behnke, W179 N12536 Fond du Lac Avenue, spoke in support of his proposal and asked PC to vote in favor.

- Mary Franz, 4349 Hillside Road, Slinger, owns land west of property, had concerns with amount of roofline where there is non-permeable area causing unusual runoff, noise, lighting issues for the neighbors. Not opposed to the project but has these concerns.
- Jenna Kruschel, W177 N12581 Apple Blossom Lane, concerned with noise, additional people, traffic, and music.
- Randy Stranossek, W177 N12601 De La Court, concerned with raising a family with alcohol and what can happen, does not support hard liquor or music.
- Kevin Behnke stated he was prepared to move forward with just the wine and beer license he has and will see how it goes without the hard liquor. He is trying to provide a higher venue space. No music will be played outside. He said he never used to play music outside until Gehl's started playing outside then he decided to play outside. The new operation will have music completely inside.
- Richard Will, W177 N12604 Apple Blossom Lane, has concerns with vehicle traffic. He has no complaints with the winery or the music, but a wedding venue music may not be reasonable and could have some negative impact on the neighbors.
- Charlie Reyna, W177 N12607 De La Court, has concerns with alcohol, late night music and traffic.
- Rick Miller, N120 W15241 Freistadt Road, current customer of the Apple Works, great little venue, Kevin will adhere to the rules. Feels it is a nice addition to the winery and nice addition to the community.
- Jan Miller, W151 N10297 Windsong Circle W, spoke in favor of the proposal, enjoys the place, thinks its great a business wants to expand.

Public Hearing closed at 7:22 pm.

MOTION Baum second Nilles to Approve a conditional use permit amendment to CUP#01-13 for the 10.8-acre Apple Works Winery property located at W179 N12536 Fond du Lac Avenue subject to the following conditions:

- 1. This permit authorizes limited uses and activities as set forth in the conditional use permit amendment application dated October 13, 2020, the additional information submitted on 12/2/2020, and in the supporting documents made part of the application on file with the Village. All of the operational characteristics and services as described, as well as any commitments made by the Applicant as set forth in the application, supporting documents, and made during presentations to the Village Plan Commission, Village Board and Village staff are deemed to be conditions of approval.***
- 2. If the use, activities and/or operation subject of this permit falls out of conformity with the conditions herein, or where there is a change in the nature, character, intensity or extent of the permitted conditional uses and activities which cause special problems or harmful effects associated with the permitted uses and activities that were not revealed or anticipated at the time this CUP was granted, or, where conditions imposed by this CUP that were anticipated to mitigate or eliminate harmful effects associated with the uses and activities but are subsequently insufficient to do so, or, for similar cause based upon consideration for the public comfort, safety, and welfare, this conditional use permit may be terminated or modified by the Village Board by the amendment to or addition of conditions after public hearing thereon.***
- 3. In the event the Village receives complaints regarding noise, activities or other negative impacts on surrounding neighborhood and properties, the Owner/Operator shall work cooperatively with the Village to mitigate and resolve the issue.***
- 4. Site improvements, buildings, signage, exterior lighting and any other improvements on***

the property that are necessary for the land uses and activities authorized under this CUP shall be reviewed and approved by the Village through the Zoning Permit or Site Plan application process as determined by the Village Zoning Administrator. If required, Site Plan review and approval will include Plan Commission review and approval.

- 5. Building permits and commercial building code plan approval are required for the proposed remodeling; contact Inspection Services prior to any work for details on the required permits and plan approvals.***
- 6. Washington County shall be consulted regarding compliance with all applicable POWTS sanitary requirements prior to or concurrent with Site Plan submittal.***
- 7. Applicant to obtain all required liquor licenses and/or permits from the state and Village prior to any and all events held on the property.***
- 8. All signage, temporary and permanent, requires a permit; contact Planning & Zoning Services for details.***
- 9. A pre-occupancy inspection is required by the Fire Department.***

Discussion followed. Trustee Baum said he had concerns with noise. He has been to small boutique weddings where the room gets stifled and then all the doors are opened and the amplified music escapes. Mr. Behnke agreed that could happen, but he is putting in a HVAC system to prevent that. Trustee Baum added if headlights become a problem, bushes or a berm could be put in. If traffic becomes an issue the Planning Department should be contacted to be addressed. He does not feel there will be a problem with alcohol.

Commissioner Laszewski commented if Mr. Behnke is willing to forgo hard alcohol, who will patrol that and ensure a liquor license does not get approved. Mr. Behnke stated a liquor license is not available and if he wants one, he will need to purchase it for \$10,000. He said he only wants beer and wine in the winery. Commissioner Laszewski asked if an amendment should be added that the CUP is only for a Class B liquor license. Mr. Behnke did not want to have that condition in the CUP forever because he needs to compete with other venues. And as time goes on, he needs to be able to adapt. Chairman Wolter said he could propose an additional amendment in the future. He asked based on how the CUP is stated, does it allow for any outside music? Mr. Behnke said the existing permit did not allow music outside but he admitted he had started allowing music outside. Associate Planner Zandt said the current CUP states he is responsible for contacting the Planning Department for an applicable temporary permit. Planner Retzlaff said a special permit or a CUP may be required and if Plan Commission desires to prohibit music, it should be added as a special condition so there is no gray area or misunderstanding in the future.

MOTION to Amend Baum second Shadid to add Condition #10 to specify that outdoor non amplified acoustic music is allowable to 9:00 pm.

- Gary Schwind, W177 N12586 Apple Blossom Lane, said he does not want people singing and dancing till 9 at night. This is a concern, this is a secluded area, not a bar, park or a wedding venue, also shocked by the new big red building.

MOTION to Amend failed 4-2 (Wolter/Shadid).

MOTION to Amend Baum second Laszewski that the hard liquor license aspect of this CUP be limited to the existing wine and beer license at this time.

MOTION to Amend carried 6-1 (Kimmler).

MOTION to Approve as Amended carried unanimously.

Keller Inc., Agent for Ashbury Woods Condo Association, property owners - Division Road and Ashbury Lane. The property manager is seeking approval of an amendment to Conditional Use Permit #4-87 and site development plans for the modifications and renovation of the common recreational area on the 24.2-acre residential development. Planner Retzlaff summarized the proposal.

Public Hearing opened at 7:53pm.

- Chairman Wolter read comments from Casey Lalko, W167 N11057 Western Avenue, into the record. Mr. Lalko is concerned with neglected maintenance, possible parking, security, and wetland issues.
- Casey Gabrielson, Keller, said he would present a landscape design plan for the dog containment area and move the light. Drainage should not be an issue because there is less hard surface.

Public Hearing closed at 7:56 pm.

MOTION Baum second Kimmler to Approve an amendment to Conditional Use Permit (CUP) #4-87 for the Ashbury Woods Condominiums to add the additional recreation features and facilities in the common area proposed by the Condominium Association subject to the following conditions:

- 1. The additional recreation features and facilities allowed on the property shall be limited to those specified in the conditional use permit (CUP) application and supporting documents dated September 28, 2020. The size and relative location of those areas within the property from which said uses and activities are permitted are limited to that presented in the detailed site plan dated September 17, 2020.***
- 2. If the use, activities and/or operation subject of this permit falls out of conformity with the conditions herein, or where there is a change in the nature, character, intensity or extent of the permitted conditional uses and activities which cause special problems or harmful effects associated with the permitted uses and activities that were not revealed or anticipated at the time this CUP was granted, or, where conditions imposed by this CUP that were anticipated to mitigate or eliminate harmful effects associated with the uses and activities but are subsequently insufficient to do so, or, for similar cause based upon consideration for the public comfort, safety, and welfare, this conditional use permit may be terminated or modified by the Village Board by the amendment to or addition of conditions after public hearing thereon.***

MOTION carried unanimously.

MOTION Baum second Kimmler to Approve the Site Plan for the Ashbury Woods Condominiums to add the additional recreation features and facilities in the common area proposed by the Condominium Association subject to the following conditions:

- 1. This approval is subject to all the conditions and requirements set forth herein and adopted by the Plan Commission. Approval is granted for the site development and building plan set dated September 17, 2020.***
- 2. Conditions #1 through #6 set forth in the Zoning Permit approval dated October 15, 2019 are included as conditions of approval for this Site plan application.***
- 3. All exterior lighting needs to be positioned with a recessed light source (i.e. cut-off fixture) and not be angled outward that might cast glare off-site toward the Village Hall-***

Library property to the north. With respect to lighting the sorts court, the pole-mounted fixture should be re-located to the north side of the court with the light cast down and/or outward toward the south.

- 4. The dog park and fence enclosure shall be buffered with landscaping and plantings that will provide a year-round visual buffer from the public property to the north (Village Hall and Library). A variety of trees and shrubs, evergreen and deciduous, should be planted along the north and west sides of the proposed dog park and pedestrian path between the two fenced enclosures to buffer the view of these features and effectively send a message that these features are private and NOT available for the public to use. A landscape plan for the dog park and fence enclosure shall be prepared and submitted to the Village Planner for review and approval prior to installation of or use of the area for the proposed dog park, pedestrian path, or fence enclosure.***
- 5. All outstanding items identified by the Public Works Department and engineering staff in the memo dated October 19, 2020 shall be addressed and reflected in additional information and/or revised plans submitted to engineering staff for review and approval prior to commencing construction or issuance of a building permit for the pavilion (except that an early start footing & foundation permit may be issued).***

MOTION carried unanimously.

Community Development Department - Text Amendments to the Village of Germantown Municipal Code-Chapter 17.48(3) Nonconforming Structures.

The Village Attorney has prepared a proposed amendment to the non-conforming structure provisions regarding the reconstruction of an existing non-conforming deck. Planner Retzlaff summarized the amendment that was created as the result of a resident in the Esquire Estates neighborhood that was denied a building permit application to replace an existing attached deck with a larger deck on the rear of their dwelling because the proposed replacement deck had a rear property line setback less than the minimum required. The amendment is relatively narrow in scope in that it provides for the replacement of an existing non-conforming deck under specific circumstances where said non-conforming deck is:

1. In any single-family residential district with a replacement deck that is the same size and shape as the existing deck; or
2. In any single-family residential with a *larger* replacement deck provided that the lot abuts an undeveloped outlot or common area in a subdivision and:
 - a. the replacement deck is not closer than 5 feet from the rear property line.
 - b. the deck is not located over a utility or drainage easement.
 - c. the owner submits a signed statement from the Homeowner's Association approving the deck location and design; and
 - d. that no variance to these provisions shall be permitted (by the BOZA).

As proposed, the amendment to Section 17.48(3)(d) would provide the code revisions necessary to allow the owner in Esquire Estates to replace their existing deck with a larger deck closer to the rear property line. Moreover, it would appear that other similarly situated property owners in Esquire Estates and possibly other subdivisions in other residential districts throughout the Village would be able to replace their existing non-conforming decks with larger and closer decks without having to go through the variance process.

Public Hearing opened at 8:04 pm.

- Jolene Pieper, N111 W16625 Esquire Court, explained she had been trying to rebuild her deck that is falling apart for the last 3 years. And after having a survey done of her property, she discovered her rear lot line is closer than she thought, and her house is too close to the rear lot line and does not meet the setback requirements. She said the entire HOA for Esquire Estates

supports the text amendment that would help several other homes including homes in Blackstone Creek, that are also not in compliance.

Public Hearing closed at 8:09 pm.

MOTION Baum second Kimmler to Approve the proposed Text Amendment to the Village of Germantown Municipal Code Chapter 17.48(3) Nonconforming Structures.

MOTION carried unanimously.

Gehl Foods, LLC, Agent for AGNL Dairy - N116 W15970 Main Street. Steven Buck, agent for Gehl Foods is seeking approval of site development and building plans for a proposed Nitrogen Generation Facility. Associate Planner Zandt summarized the proposal. Plan Commission voted to deny approval of the Site Plan at the October 12th meeting. As a result of action taken by the Village Board on November 2nd to Approve the CUP and PDD Amendment, the Plan Commission action taken on October 12th to deny has been overturned.

MOTION Baum second Kimmler to Approve the site development and building plans for the proposed Nitrogen Generation Facility addition to the Gehl Foods food production plant located at N116 W15970 Main Street subject to the following conditions:

- 1. This approval is subject to all the conditions and requirements set forth herein and adopted by the Plan Commission. Approval is granted for the site development and building plan set dated September 11, 2020.***
- 2. All landscaping, screening, grading, paving, storm water management, utility and other improvements that are not fire-safety related as shown on the approved site plans shall be installed as proposed prior to issuance of an occupancy permit unless a cash bond or letter of credit in an amount equal to 120 percent of the estimated installation and material costs reviewed and approved by the Village is submitted to the Village as necessary to ensure that installation of the proposed features and improvements will be completed within one (1) year after issuance of the occupancy permit.***
- 3. State approved plans and a \$20,000 occupancy bond are required by the Building Inspection Department as part of the building permit application.***
- 4. No signage, other than the tank manufacturer's name and Gehl Foods, shall be displayed on the tank/cold box.***

MOTION carried unanimously.

Arcvision, Agent for Kentucky Fried Chicken - N96 W17860 County Line Road. The property owner has submitted remodeling plans for the existing KFC restaurant. Planner Retzlaff summarized the proposal.

Brian Seifert, Arcvision, explained the tower element is a simple metal cap that will add an additional element. The full bright color scheme is preferred by the franchise.

Commissioner Shadid said he preferred the muted color scheme. Trustee Rep Baum explained if you saw an actual picture of that color scheme it looks dull and dingy. The bright red and white will make this building stand out.

MOTION to Approve the site plans dated September 11, 2020 for the proposed interior and exterior remodeling of the KFC restaurant located at N96 W17860 County Line Road subject to the following conditions and including the full bright stripes and new fancy canopy top:

- 1. This approval is subject to all the conditions and requirements set forth herein and adopted by the Plan Commission. Approval is granted for the site development and building plan set dated September 11, 2020.***
- 2. The proposed parapet-mounted light fixtures shall provide a complete “cut-off” fixture and not be tilted such that light is directed outward/away from the building.***
- 3. All exterior signage, including all logos, words and phrases shown in the site plan set dated September 11, 2020, shall require a separate sign permit reviewed and approved by the Plan Commission prior to installation or display of any exterior signs.***
- 4. Commercial plan review and building permits shall be obtained from the Village prior to commencing any interior demolition, remodeling or construction.***

MOTION carried unanimously.

Veridian Homes, LLC, Agent for VHKE LLC, Property Owner - N104 W14942 Donges Bay Road

Matt Cudney, Veridian Homes, is requesting approval of a preliminary subdivision plat for a 16-lot, 14.7-acre single-family residential development called Kinderberg Estates. Associate Planner Zandt summarized the proposal. She added as noted in public comment, the invasive species removal plan was not included with Condition #7 regarding the landscape plan and this plan is highlighted in the dev agreement but if preferred to be specifically stated in this condition it could be added in addition to the Landscape plan dated 8-7-2020. Planner Retzlaff explained there is a requirement for a supplemental landscape plan on the east side dealing with invasive species removal and is in the development agreement. That plan was prepared and submitted, reviewed and approved by staff along with copies of approval letters from the 6 property owners that own lots to the east of the property line that have been involved in the invasive species plan preparation process. Staff is confident they have covered that aspect of the required landscaping plan as was originally anticipated. Chairman Wolter confirmed that this plan does involve the removal of invasive species and supplements the landscaping plan originally submitted and everyone whose yard is touching east side border is in approval of the plan as submitted.

Terry Tschetter, W147 N10451 Wilson Drive, stated he had seen the plan and signed off on it, but he only saw reference to the August landscaping plan and not the invasive species landscape plan. He commended Veridian for contacting each one of the residents and involving them in the plan but did not see how the plan dated 10/27 was tied into the actual landscape plan. Planner Retzlaff said the condition in the development agreement refers to the supplemental invasive species plan.

MOTION Baum second Kimmler to Approve the final subdivision plat for the 16-lot, 14.7-acre single-family residential development called “Kinderberg Estates” located on Preserve Parkway subject to the following conditions:

- 1. Record Drawings shall be approved by the Public Works Department prior to recording the final plat, as required by the Development Agreement.***
- 2. All technical issues and plan corrections identified by the Village Surveyor (see December 4, 2020 memo) shall be addressed and reflected in revised plans submitted and approved by Village Staff prior recording of the Final Plat.***
- 3. The Declaration of Covenants, Conditions and Restrictions of Kinderberg Estates subdivision shall be approved by the Village Attorney prior to recording of the final plat.***
- 4. A Letter of “no objection” from the WI Department of Administration (DOA) shall be submitted to the Village prior to recording the final plat.***

5. ***The final plat shall include notations or labels shall be added to the plat that prohibit direct access to Donges Bay Road and Preserve Pkwy from Lots #1, #10, #11, #16 & Outlot 3.***
6. ***As-built measurements for the stormwater pond in the southwest corner of the subdivision and for the berms along Donges Bay Road and Preserve Parkway shall be submitted prior to the recording of the final plat.***
7. ***All landscaping as identified on the revised Landscaping Plan dated 8-7-20 shall be completed per the signed Development Agreement.***

MOTION carried unanimously.

Vital Signs, Agent for Veridian Homes - N104 W14942 Donges Bay Road. The request is for approval of a monument ground sign for the Kinderberg Estates Subdivision which is proposed to be located on the northeast corner of Blackbird Point and Preserve Parkway. Associate Planner Zandt summarized the proposal.

MOTION Baum second Kimmler to Approve the proposed permanent real estate sign for the Kinderberg Estates Subdivision with the following conditions:

1. ***Electrical permits shall be obtained from Inspection Services prior to installation of any/all electrical components.***
2. ***Specifications for the uplighting lights for the sign shall be provided to and approved by the Village Planner prior to issuance of an electrical permit. The uplighting lights need to be shielded to reduce glare visible from Preserve Parkway by locating behind the landscaping and/or with side shields.***

MOTION carried unanimously.

Aimee L. Powell - W204 N11981 Goldendale Road - The property owner is seeking approval to construct a privacy fence in a front yard at a height of 6' to replace the existing 6' fence on their residential lot. Associate Planner summarized the proposal.

MOTION Baum second Shadid to Approve the proposed installation of a fence 6' in height along the Freistadt Road and Goldendale Road front/street yard for the residential lot located at W204N11981 Goldendale Road.

MOTION carried unanimously.

Community Development Department-Future Land Use Discussion - Planner Retzlaff summarized the Future Land Use Neighborhood District Corridor map and supporting table. He said a general description for each district needs to be completed. Discussion followed:

- Decide future uses for neighborhoods
- Intersections with a red C indicate retail use could be acceptable, could be a specific area without any parameters or property lines, details needed.
- Should the Main Street area be a separate neighborhood
- Used nearby parks as names for neighborhoods
- Discuss rural preservation area land sizes. 1 per 5 acres with a conservation subdivision approach or 1 per 20 acres.
- Graef is working on a conceptual plan for Gateway Park

ANNOUNCEMENTS: None

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ADJOURNMENT: There being no further business, the meeting was adjourned at 9:25 pm.

Respectfully submitted,

Lori Johnson
Planning Assistant