

MEETING:	REGULAR MEETING OF THE PLAN COMMISSION
DATE AND TIME:	Monday, October 9, 2023 6:30 PM
LOCATION:	Germantown Village Hall Board Room N112 W17001 Mequon Road

MINUTES

- I. **CALL TO ORDER:** *This meeting has been given public notice in accordance with Section 19.83 and 19.84, Wis. Stats, in such form that will apprise the general public and news media of subject matter that is intended for consideration and action.*
The meeting was called to order at 6:30 pm.

- II. **ROLL CALL:**
Chairman Dean Wolter, Trustee Rep David Baum, Commissioners Tony Laszewski, Peter Nilles, Bob Williams, Bill Shadid and Josh Tarantino. Also in attendance were Community Development Director Jeff Retzlaff and Planning Assistant Lori Johnson.

- III. **CITIZEN INPUT:** *Please be advised per 19.84(2) that information and comment will be received from the public. It is the policy of this municipality that public input be limited to a three (3) minute period per person with a time extension granted at the discretion of the Chairperson. Be advised that there may be limited discussion of the information received but no action will be taken under public comments.*
Melanie Smythe, N140 W17938 Cedar Lane spoke.

Please visit the Village's YouTube website to watch/listen to the recorded meeting for additional details: https://www.youtube.com/channel/UCOYp0EgELzTCa9X_iCohyhQ

- IV. **APPROVAL OF MINUTES:**

A. September 11, 2023

MOTION Baum second Shadid to Approve the minutes from September 11, 2023.
MOTION carried unanimously.

- V. **NEW BUSINESS:**

- A. Mark Brooks, Agent for Das Barrel Room Tavern & Grill, and Doctors LLC, Property Owner of W201 N10466 Appleton Avenue. Application to Amend Conditional Use Permit No. #13-2019 to allow expansion of the existing off-site parking area pursuant to Section 17.28(3)(u) and Section 17.45(5) of the Village Zoning Code. **(PUBLIC HEARING & ACTION)**

Director Retzlaff summarized the proposal.

Public Hearing opened at 6:46 pm

The following people spoke in support of the applicant:

- Brian McCullough, West Bend,

- Peter Dummann, N100 W16500 Revere Lane
- John Bublitz, W201 N10466 Appleton Avenue
- Jack Daniels, W213 N10252 Beech Drive
- John Weigert, N65 W13600 Lilly Creek Road
- Tamara, N100 W14394 Sunburst Trail
- Lori, N104 W21651 Willow Creek Road
- Trustee Jolene Pieper, N111 W16625 Esquire Court

The following people spoke against the applicant:

- Tom Steinbach, W204 N10609 Hilltop Drive
- Scott Hefle, W159 N10514 Old Farm Road
- Jason Giguere, W202 N10462 Appleton Avenue
- Trustee Jan Miller, W151 N10297 Windsong Circle West
- Dominic Giguere, W202 N10462 Appleton Avenue
- Jessisca Giguere, W202 N10462 Appleton Avenue

Mark Brooks, business owner of Das Barrel Room explained the gravel was put in to enhance the parking and was done for safety. He said he needs the additional parking and because he leases the property it will be a financial burden for him to pave the gravel area. He needs the gravel to maintain the business.

Public Hearing closed at 7:18 pm.

Please visit the Village's YouTube website to watch/listen to the recorded meeting for additional details: https://www.youtube.com/channel/UCOYp0EgELzTCa9X_iCohyhQ

MOTION Baum second Nilles to Approve an amendment to Conditional Use Permit #13-2019 for Mark Brooks and Doctors LLC to allow expansion of the “off-site” parking area on the undeveloped 2.1-acre parcel located adjacent to the restaurant/bar parcel located at W201 N10466 Appleton Avenue subject to the following amendments to the adopted conditions:

1. This conditional use permit allows the continued use of the existing 4,800 sqft paved area for an off-site parking area as shown in the site plan July 11, 2019, subject to any further requirements and revisions set forth or required herein.
2. Improvements to the existing pavement shall be limited to general maintenance, including but not limited to sealcoating, crack-filling, stripping. ~~No expansion or additional off-site parking or other enhancements, e.g. additional lighting, signage, shall be made without obtaining Zoning Permit and/or Site Plan approval from the Village.~~
3. Expansion of the off-site parking area or the existing on-site parking area on the east side of the building may be allowed subject to approval of an amendment to this conditional use permit.
4. ~~, and,~~ Expansion of the “off-site” parking area east of the restaurant/bar will require:
 - a. Plan Commission approval of site, grading & erosion control, and storm water management plans;
 - b. Compliance with applicable Zoning Code and development requirements, including all setback, pavement, storm water management, landscaping and buffering requirements of the Village and MMSD;

- c. re-construction and/or other modifications necessary to make the “off-site” parking area compliant with all setback, landscaping, and other applicable Zoning Code requirements in effect at that time.
5. The off-site parking area shall be used for parking by the patrons and employees of the restaurant/bar operation during normal business hours. The off-site parking area shall not be used for overnight storage (other than snow storage) of any materials or equipment and shall be kept clean and continuously maintained.
6. In the event that the 2.1-acre undeveloped parcel is developed separately from the restaurant/bar operation, the existing 4,800 sqft “off-site” paved parking area may be required to be removed or modified to comply with all current Zoning Code requirements in effect at that time or as needed to accommodate the separate development. The continued or shared use of the off-site parking area with any development on the 2.1-acre parcel shall be addressed as an amendment to this conditional use permit.
7. Any signage displayed on the off-site parking area shall be reviewed and approved by the Village subject to applicable sign regulations.
8. 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.
9. Unless otherwise provided herein, this conditional use permit shall run with the land and transfer to subsequent owners in interest of the business and/or property.

Discussion followed.

Director Retzlaff explained there was no wetland delineation to confirm where the wetlands are located. Commissioner Shadid asked if it would be appropriate for the Plan Commission to have that information to make a decision. Director Retzlaff explained if the staff recommendation is approved, Mr. Brooks would need to proceed with a wetland delineation, engineered plans, and full construction drawings. If the approval is for just the gravel as is, and there is a concern about possible wetlands, the Plan Commission could direct Mr. Brooks to conduct a wetland delineation. Commissioner Shadid stated he has a problem allowing one business to have a gravel parking lot and is not in favor of it. Discussion continued.

Commissioner Laszewski asked if any parking would need to be eliminated because it is too close to Appleton Avenue. Director Retzlaff stated one of the conditions provides the parking lot come into compliance. Trustee Baum stated the biggest issue is not that Mr. Brooks wants to put a parking lot in. It's that he put one in that was done without a permit and now needs to come into compliance. Mark Brooks said the cost to pave the gravel is around \$50,000 and doesn't include the site approvals or erosion. He said if he needs to put the parking to what is was, people will park on Willow Creek

Road and Appleton Avenue which would be a bigger problem. Director Retzlaff stated Mr. Brooks or the Village would need to enforce no parking on that property which could also mean reconsidering the conditional use permit to allow the 14 stalls to be used. Discussion continued.

Trustee Baum said it appears the gravel driveway is right up to the wetlands and that may be a problem as well. Chairman Wolter questioned if the parking lot was developed with asphalt, there is a possibility it may need a retention pond of some kind. He was curious to know if a delineation is available from the State when Appleton Avenue was improved or when the round about was put in. Director Retzlaff said he would reach out to see if a delineation is available. Commissioner Tarantino asked if it would be more cost effective to change the location of the parking so it is away from the wetland area.

MOTION to Amend Baum second Laszewski to amend Condition #4 b to exclude the requirement for pavement only.

Discussion continued on relocating the driveway to the gravel parking in order to stay away from the wetlands. Trustee Baum explained a civil engineer will need to design something that meets our code but that is an expense to the operator.

MOTION to Amend Failed 2-5 (Wolter/Laszewski)

Discussion continued. Chairman Wolter asked if we could deal with the existing gravel and not add the extra 2,400 square feet and keep it within DNR regulations, setbacks, and runoff. Director Retzlaff stated it's hard to tell with regard to the wetlands. If we would have known in advance, we could have required a delineation and know where the boundaries are to give some guidance. Chairman Wolter explained the struggle of the Plan Commission is to uphold the ordinances within the CUP and work with what the boundaries are or described in. He said we are looking for a way to work with the business but still uphold the ordinances.

MOTION to Amend Baum second Tarantino to eliminate Condition 4b.

Discussion followed. Commissioner Williams asked if what is approved today runs with the land and if the property is purchased the new owner would be walking into the CUP and could leave it as is without making any changes and won't need to pave the lot. Director Retzlaff confirmed and said protection could be put in to address that. Commissioner Williams added he is not in support of not following the code and doesn't want to see this business go out of business. But he doesn't think there can be an unlimited amount of time that we can pass exceptions or let it pass to subsequent owners without coming into compliance. Discussion continued.

Chairman Wolter commented that this commission is bound to follow the ordinances but we are trying to create an opportunity for the business owner to maintain what he is trying to do there without violating the ordinances or stormwater management rules. He said he is curious to know if any delineation has been done within this property within the last five years. He indicated it would be hard to come to a conclusion tonight without rewriting the code as we go and he doesn't want to do that because it would

put both the Village and the owner in a precarious situation. He is not in favor of starting to pull the conditions away and would rather take a more measured approach to see what we have available for information and talk to the Village Attorney to look if part of the impervious parking can remain and see if some other type of access to the back gravel area is available. Director Retzlaff commented the operator is asking the Village to change its rules to accommodate the operator who is in a bind created by themselves and the owner who hasn't given anything. There should be some giving on all parts including the property owner and not just the Village when the owner isn't doing anything to keep the business.

MOTION to Amend Failed unanimously.

MOTION Baum second Shadid to **Table** until additional information can be brought forward on the wetlands, grading, the possibility of changing the driveway or how we can provide additional access to the back parking through an impervious method, options for it, drawings, ideas so Plan Commission can look to see if it's something that can be worked with within the code.

MOTION to Table carried unanimously.

- B. John & Amanda Thompson, Property Owners of W172 N10981 Division Road. Conditional Use Permit application to allow "raising chickens for family consumption" on the property pursuant to Sections 9.11 and 17.15(2)(b) of the Village Zoning Code. **(PUBLIC HEARING & ACTION)**

Chairman Wolter called a 3 minute recess: 8:14 pm

Chairman Wolter called the meeting back to order at 8:20 pm

Director Retzlaff summarized the proposal.

Public Hearing was opened at 8:24 pm.

Public hearing closed at 8:25 pm.

MOTION Baum second Williams to Approve a Conditional Use Permit for John & Amanda Thompson to allow the "raising of poultry for family consumption only" on their property located at W172 N10981 Division Road subject to the following conditions:

1. The uses and activities allowed on the property shall be limited to those uses and activities and relative locations specified in the conditional use permit application (CUP) and supporting materials dated September 11, 2023. The physical facilities for which said uses and activities are permitted include the proposed 8'x8' enclosed coop and 900 sqft fenced, free-range chicken run.
2. The building used to house the animals, i.e. the 8' x 8' enclosed coop, shall be located not less than 50' from the nearest residential dwelling and a minimum of 100' from all property lines.
3. If the use, activities and/or operation subject of this permit falls out of conformity with the conditions herein or other applicable Municipal Code provisions including Section 9.11, 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.

Discussion followed.

MOTION carried unanimously.

- C. James Weber, Agent for The Elite Soccer Academy LLC and Techplex LLC, Property Owner of N115 W19150 Edison Drive. Sign Permit and Conditional Use Permit applications for an "Indoor Health or Recreation Establishment" pursuant to Section 17.33(3)(h) and Section 17.29(1)(kk) of the Village Zoning Code. **(PUBLIC HEARING & ACTION)**

Director Retzlaff summarized the proposal.

Public hearing opened: 8:32

- Vernon Seymour, N115 W18970 Edison Drive, comments read into the record, he was concerned with the amount of additional traffic that could be generated.

Public hearing closed: 8:35

MOTION Baum second Tarantino to Approve the Conditional Use Permit for the operation of The Elite Soccer Academy, an indoor health, fitness, and performance training facility in the existing building located at N115 W19150 Edison Drive in the Germantown Industrial Park subject to the following conditions:

1. This permit authorizes limited uses and activities as set forth in the conditional use permit application dated August 8, 2023 and in the supporting documents made part of the application on file with the Village. All 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 activities and/or uses which cause problems or harmful effects not anticipated at the time of approval of this CUP or where conditions imposed were anticipated to ameliorate or eliminate such problems or harmful effects but are subsequently insufficient to do so, or, for similar cause based upon consideration for the public comfort, safety, and welfare, the 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. All interior building modifications and/or site improvements require permits and/or other approvals from the Village. State-approved plans may be required for any proposed improvements or remodeling. Detailed plans for any interior or exterior improvements, including the addition of paved parking, shall be submitted to the Community Development Department as part of a Zoning Permit and/or building permit application.
4. The owner/operator shall contact the Fire Department and Inspection Services for a pre-occupancy inspection prior to commencing operations.
5. The owner/operator shall coordinate with the Fire Department and Inspection Services to determine the applicable occupancy type/classification and maximum occupancy for the occupied space. If the proposed use constitutes the type of change

in occupancy that requires interior and/or exterior remodeling or additional fire safety features to comply with current building, fire safety and other applicable codes and regulations, the operator shall coordinate the preparation and submittal of state-approved plans to and approved by the Village Fire Department and Inspection Services prior to occupancy.

6. Any additional signage, including temporary signs, requires a permit from the Community Development Department.

MOTION carried unanimously.

MOTION Baum second Shadid to Approve the proposed wall sign for The Elite Soccer Academy on the building located at N115 W19150 Edison Drive in the Germantown Industrial Park subject to the following conditions:

1. Electrical permits shall be obtained from Inspection Services prior to installation of any/all electrical components.

MOTION carried unanimously.

D. Stephen and Danielle Cholewa, Property Owners of W166 N10577 Surrey Drive. Zoning Permit to install a 6-foot fence in a front yard and drainage easement. **(ACTION; continued from 9-11-23)**

Director Retzlaff reviewed the proposal. Property owner Stephen Cholewa explained where he is proposing to locate the fence.

MOTION Baum second Tarantino to Approve the zoning permit application to install a 6' wood privacy fence in the Old Farm Road front/street yard and in the 12' wide public drainage easement along the southwest property line of the Cholewa property located at W166 N10577 Surrey Drive subject to the following conditions:

1. The fence shall be setback a minimum of two (2) feet from the property line along Old Farm Road

2. It shall be the responsibility of the homeowner to always maintain a free flow of water within the private drainage easement.

3. If the fence needs to be removed to make improvements and/or conduct maintenance within the drainage easement, the property owner shall be responsible for removing the fence to the extent necessary within three (3) days of being notified by the Village of Germantown. If not removed within three days, the Village may remove the fence at its discretion and charge back any/all costs of doing so to the property owner. The property owner shall be responsible for any/all costs associated with any damage, removal, or re-installation of said fence.

4. A fence permit is required from Inspection Services prior to installation. Contact SAFEBuilt for more information.

5. The conditions of this approval shall be recorded with the Washington County Register of Deeds.

Discussion followed on the location of the fence. Trustee Baum was concerned there is not a good site line looking west when backing out of the garage and if the fence was closer to the house he would have less problems with that. Mr. Cholewa said he would lose 2,000 square feet of grass if he did that and that he would be able to see when backing out of the driveway. Commissioner Williams stated he was not a proponent of 6 foot fences in a front yard and the property owner could still accomplish his reasons for a 6 foot by cutting the fence at the corners of the home. Chairman Wolter also stated he does not like a 6 foot fence in a front yard and that this fence is setting a precedent and is a distraction. He asked Mr. Cholewa to consider tying the

fence to the side of the house because it will be a better look.

MOTION Failed 1-6 (Nilles)

MOTION Baum second Shadid to Approve the fence to be located outside the northern easement setback and go parallel to that easement all the way to the driveway as illustrated with the blue line on the screen at 6 feet. *(NOTE: The motion to approve a fence 6 feet in height was made in reference to a screen image which shows a line setback from the road right-of-way a distance equal in depth to the northern easement and parallel to the right-of-way to a point on the west side of the existing paved driveway).*

MOTION carried 6-1 (Williams)

VI. ANNOUNCEMENTS:

Chairman Wolter read comments into the record for the Thompson CUP that were received.

Joe Jenkins, N110 W16936 Ashbury Circle, is not opposed to chickens but is opposed to roosters.

Steve Kennedy, N108 W17010 Hawthorne Drive, is opposed to keeping chickens unless limited to no more than 5 and no roosters on the premises.

VII. ADJOURNMENT:

The meeting was adjourned at 8:59 pm.