

MEETING:	REGULAR MEETING OF THE PLAN COMMISSION
DATE & TIME:	Monday, March 11, 2024 at 6:30 PM
LOCATION:	Germantown Village Hall Board Room N112 W17001 Mequon Road

Any member of the body and/or citizen may also attend the meeting virtually through the WebEx platform, Meeting #: **2553 216 2843** Password: **qRNIkJrY345** which can be accessed by phone at **408-418-9388** or by logging on at: <https://villageofgermantown.my.webex.com/villageofgermantown.my/j.php?MTID=m3e60c9657945a5ad89155bdbfd3c356f>
Citizens not wishing to attend the meeting personally or virtually may submit any public comments by sending an email to: comments@germantownwi.gov by 4 p.m. on the day of the meeting so that it can be provided to the members of the body for their consideration. Previously recorded Plan Commission Meeting Videos can be viewed at https://www.youtube.com/channel/UCOYp0EgELzTCa9X_iCohyhQ

AGENDA

- 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.*
- II. **ROLL CALL:**
- III. **APPROVAL OF MINUTES:**
 - A. February 12, 2024
- IV. **NEW BUSINESS:**
 - A. Dawn DiNicola, Property Owner of W158 N9763 Sumac Road. Zoning Permit application to install a 4' fence in a utility & drainage easement. (ACTION)
 - B. Robert & Coral Kline, Property Owners of W156 N10876 Catskill Lane. Zoning Permit application to install a 6' fence in a storm sewer easement. (ACTION)
 - C. 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. (ACTION; TABLED from October 9, 2023)
- V. **CITIZEN INPUT/PUBLIC APPEARANCE:** *(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.)*
- VI. **ANNOUNCEMENTS:**
- VII. **ADJOURNMENT:**

UPON REASONABLE NOTICE, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, please contact the Village Clerk at (262)250-4745 at least 2 days prior to the meeting. Notice is given that a majority of the Village Board may attend this meeting to gather information about an item over which they have decision-making responsibility. This may constitute a meeting of the Village Board per State ex rel. Badke v Greendale Village Board, even though the Village Board will not take formal action at this meeting.

MEETING:	REGULAR MEETING OF THE PLAN COMMISSION
DATE AND TIME:	Monday, February 12, 2024 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:**
Plan Commission members present were: Chairman Dean Wolter, Trustee Rep David Baum, Commission Members Tony Laszewski, Peter Nilles, Bob Williams, Bill Shadid and Josh Tarantino. Also present Community Development Director Jeff Retzlaff and Planning Assistant Lori Johnson
- III. **APPROVAL OF MINUTES:**
MOTION Baum second Shadid to Approve the Minutes from January 8, 2024 and January 22, 2024.
MOTION carried (Williams abstained).
 - A. January 8, 2024
 - B. January 22, 2024
- IV. **NEW BUSINESS:**
 - A. Review Residential Market Analysis & Strategy Planning Report by Tracy Cross & Associates, Inc. (DISCUSSION)
Director Retzlaff summarized the discussion. Following the joint meeting on January 22nd, the Village and Washington County Staff met with Erik Doerschling, Tracy Cross & Associates, to discuss suggested revisions to the report to address comments raised during the joint meeting. Discussion followed to address questions and comments.

Trustee Baum commented that the report is intended to provide data for us to produce our own vision for the Village. The report doesn't say what is right for Germantown, it says what we can use to determine where we want Germantown to go. Director Retzlaff said the report can be used in multiple ways including as a guide to talk about residential development strategy and policy going forward. And if the Village wants to meet the demand for housing in our market area and provide housing for the demographic of people in the \$250,000 to \$450,000 range, then the products as recommended in the report will be successful. Discussion continued.

Chairman Wolter said we don't have zoning for the smaller, less expensive, portions referred to in the report. Director Retzlaff agreed saying a Planned Development District would need to be created. But we could address the zoning through our neighborhood planning efforts and make code changes that would accommodate different types of residential developments and densities which is built into the Plan now. Discussion continued.

Chairman Wolter asked if Erik Doersching would be available to come back to another meeting to have additional discussion that is not time tempered. Trustee Baum asked if we could get audience participation as well.
This item was for discussion only.

- B. American Architectural Group, Agent for Washington Drive LLC, Property Owner, and Midwest Products, Inc.- W129 N11025 Washington Drive. Site Plan Review for a new 52,038 sqft manufacturing and warehouse building - Revised Building Elevations. (ACTION)

Director Retzlaff summarized the proposed changes. Adam Hertel, American Architecture Group, explained the revised elevations and renderings.

MOTION Baum second Laszewski to Approve the revised building elevations and renderings as presented without the sign and with the following revisions to the original conditions of approval:

1. This approval is for the various plan sheets that comprise the site plan set as noted below and is subject to compliance with all the conditions and requirements set forth herein and subsequently adopted and/or revised by the Plan Commission. Approval is granted for the following unless superseded by subsequent plan sheets approved by Village Staff pursuant to revisions required herein and/or by the Plan Commission:

- a. Architectural plans dated February 5, 2024 ~~November 13, 2023~~;
- b. Civil Engineering plans dated November 13, 2023;
- c. Landscaping plans dated November 13, 2023;
- d. Lighting plans (photometric plan) dated November 13, 2023;

If revised plan sheets are necessary, each revised sheet shall contain the date of said revision clearly stamped in the lower right corner.

2. All landscaping, screening, grading, and paving improvements 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 for the shell building.

3. All exterior doors (except primary entrance) shall be clearly marked with reflective 5" or larger letters/numbers to aid emergency personnel access as required by the Police Department.

4. All outstanding items and issues identified by Village Staff in the following review memos shall be resolved and reflected in additional information and/or revised plans submitted to Staff for further review, comment, and approval prior to commencing construction or issuance of building permits (excluding “early start” site clearing and footing/foundation work approved by the Village and/or WI DSPS):
 - a. January 3, 2024 memo from Kevin Driscoll, PE, Village Engineer
5. State agency (DSPS) approved plans and a \$20,000 occupancy bond are required by Inspection Services at the time of building permit application. The Village of Germantown is an authorized delegated agent of DSPS to provide all commercial plan review and inspection services through SAFEBuilt of WI and the Village of Germantown.
6. No roof plan has been provided showing what, if any, roof-mounted mechanicals, and any other roof-mounted equipment is proposed. As required by the Germantown Business Park covenants, all roof-mounted equipment shall be architecturally screened. A proposed roof plan showing all roof mounted equipment and screening shall be submitted to Village Staff (or Plan Commission if determined necessary by Village Staff) for review and approval prior to issuance of a building permit.
7. Wall mounted signage is not permitted in the Business Park; only monument signage is allowed. All exterior signage, including on-site direction signs and temporary signs, require a permit or approval from the Village prior to installation.
8. Additional street trees (deciduous vs. ornamental) in an amount equal and planting location equal to 1 tree per 25 feet of street frontage (34 trees) and additional plantings shall be installed around the parking area perimeter, at the driveway entrance on Washington Drive, at the buildings primary entrance to meet the Germantown Business Park covenant requirements.
9. A revised landscape plan (including a revised plant list with installation sizes meeting the minimum requirements) addressing the comments and recommendations of the Village Forester shall be prepared and submitted for review and approval by Village Staff prior to issuance of a building permit.
10. The minimum planting size requirements in the Germantown Business Park covenants require 3” caliper for deciduous canopy and ornamental trees; minimum 6’ height for all evergreen trees; and 5 gal. for all shrubs. The Plant List on Sheet C1.06 of the landscape plan shall be revised to include these minimum requirements for planting at the time of installation.
11. ~~The building architecture has insufficient articulation and/or other architectural and material features necessary to meet the architectural requirements in the Germantown Business Park covenants. Additional reveals, articulation, materials and/or textures should be included in the design. Revised elevation plans shall be prepared and submitted for review and approval by the Plan Commission prior to issuance of a building permit (serving as the Architectural Review Board for the Village and Germantown Business Park).~~

12. Right-of-way permits are required for any/all construction conducted in the public right-of-way for Washington Drive. Contact the Public Works Department/Highway Superintendent for permit applications and submittal requirements.
MOTION carried unanimously..

C. Excel Engineering, Inc., Agent for Bethlehem Lutheran Church, Property Owner N108 W14290 Bel Aire Lane. Site Plan Review for a 23,471 sqft Building and Parking Expansion-Revised Site and Landscaping Plans. (ACTION)

Director Retzlaff summarized the proposed revisions to the landscape plan. Reid Jahns, Excel Engineering, reviewed the proposed changes.

MOTION Baum second Shadid to Approve the revised landscaping plan with the following conditions:

1. This approval is for the various plan sheets that comprise the site plan set as noted below and is subject to compliance with all the conditions and requirements set forth herein and subsequently adopted and/or revised by the Plan Commission.

Approval is granted for the following unless superseded by subsequent plan sheets approved by Village Staff pursuant to revisions required herein and/or by the Plan Commission:

- a. Architectural plans dated December 8, 2023;
- b. Civil Engineering plans dated February 5, 2024 ~~December 8, 2023~~;
- c. Landscaping plans dated February 5, 2024 ~~December 8, 2023~~;
- d. Lighting plans (photometric plan) dated January 26, 2024 ~~December 8, 2023~~;;

If revised plan sheets are necessary, each revised sheet shall contain the date of said revision clearly stamped in the lower right corner.

2. All landscaping, screening, grading, and paving improvements 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 for the shell building.

3. All exterior doors (except primary entrance) shall be clearly marked with reflective 5" or larger letters/numbers to aid emergency personnel access as required by the Police Department.

4. All outstanding items and issues identified by Village Staff in the following review memos shall be resolved and reflected in additional information and/or revised plans submitted to Staff for further review, comment, and approval prior to commencing construction or issuance of building permits (excluding "early start" site clearing and footing/foundation work approved by the Village and/or WI DSPS):

- a. January 2, 2024 memo from Kevin Driscoll, PE, Village Engineer

5. State agency (DSPS) approved plans and a \$20,000 occupancy bond are required by Inspection Services at the time of building permit application. The Village of Germantown is an authorized delegated agent of DSPS to provide all commercial

plan review and inspection services through SAFEBuilt of WI and the Village of Germantown.

6. ~~The proposed parking lot along the west property line shall be moved to meet the minimum 20' setback requirement. Sheet C1.1 of the plan set indicates that the southwest corner of the new parking area along the west property line is setback 19.41 feet (and tapers to a setback >20 feet somewhere along the edge as it moves northerly).~~

7. ~~Additional deciduous and evergreen trees and shrubs shall be installed along the west property line around the new parking lot perimeter in an amount and type necessary to provide screening from the residential lots to the west. As an alternative, install a minimum 6' high wood privacy fence along the property line for a 15' distance north and south beyond the ends of the new parking lot.~~

8. ~~Additional street trees meeting the Village's street tree requirements and additional plantings shall be installed along the Fond du Lac Ave frontage and Bel Aire Lane (east of the relocated driveway). At a minimum, additional street trees in an amount equal to 1 tree per 50 feet of road frontage shall be installed along the frontage for Fond du Lac Ave and along Bel Aire Lane east of the relocated driveway in addition to other deciduous and evergreen trees in an amount that will replace the trees being removed at a 1:1 ratio.~~

9. ~~A revised landscape plan including a revised plant list with installation sizes meeting minimum requirements and addressing all Village Staff comments and recommendations presented in the Staff Report & Recommendation (dated 1/8/24) shall be prepared and submitted for review and approval by Village Staff prior to issuance of a building permit. Said plan to include the requirements of Conditions #8 and #9 above.~~

10. The existing non-conforming wood post & panel sign along Fond du Lac Ave that is being removed shall not be reinstalled in its current form and will have to be revised to be code compliant if re-installed along Fond du Lac Ave. Under the current sign regulations, one additional monument/ground sign may be installed along Fond du Lac Ave which will have to be installed on a new monument-style masonry base (vs. the existing wood support posts). A separate sign permit application is required for any exterior signage.

11. Right-of-way permits are required for any/all construction conducted in the public right-of-way for Bel Aire Lane. Contact the Public Works Department/Highway Superintendent for permit applications and submittal requirements.
MOTION carried unanimously.

D. Keller, Inc., Agent for Orange Blossom LLC, Property Owner of David J. Frank Landscape Contracting - N120 W21350 Freistadt Road. Site Plan Review for a 9,376 sqft Maintenance Building. (ACTION)

Director Retzlaff summarized the proposal. Scott Lausten, Keller Inc., answered questions. Discussion followed.

MOTION Baum second Tarantino to Approve the site development and building plans for a 9,376 sqft maintenance building for the existing DJ Frank landscape contracting services operation located at N120 21350 Freistadt Road subject to the following conditions:

1. This approval is for the proposed maintenance building only (and site area immediate adjacent to the proposed building) and is subject to all the conditions and requirements set forth herein and adopted by the Plan Commission. Approval is granted for the following plans unless superseded by subsequent plan sheets approved by the Village Planner or Engineer pursuant to revisions required herein and/or by the Plan Commission:
 - a. Architectural plan set dated (revised) December 6, 2023
 - b. Engineering plan set dated December 11, 2023
 - c. Exterior Lighting plan set dated December 11, 2023
2. All landscaping, grading, paving, storm water management, utility and other improvements shown on the approved site plans shall be installed as approved prior to issuance of an occupancy permit for the building addition 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. All issues, plan revisions and technical corrections identified in the January 29, 2024, review memo from the Village Engineer shall be addressed in revised plans and/or supplemental information submitted for review and approval prior to issuance of building permits.

MOTION carried unanimously.

- E. Keller, Inc., Agent for Park4Properties LLC, Property Owner of Force Global - N114 W18635 Clinton Drive. Site Plan Review for a 7,500 sqft Building Addition and Site Improvements. (ACTION)

Director Retzlaff summarized the proposal. Aaron Nagel, Keller Inc., answered questions. Trustee Baum asked if any additional landscaping was proposed because the building looked barren. Mr. Nagel commented on the condition requiring 2 additional street trees explaining existing light posts make it difficult to add the trees. He suggested adding something to the front of the building instead of the street trees as a compromise.

MOTION Baum second Nilles to Approve the site development & building plans for a 7,500 sqft industrial building addition to the Force Global facility located at N114 W18635 Clinton Drive in the Germantown Industrial Park subject to the following conditions:

1. This approval is for the proposed building addition and pavement expansion and is subject to all the conditions and requirements set forth herein and adopted by the 563Plan Commission. Approval is granted for the following plans unless superseded by subsequent plan sheets approved by the Village Planner or Engineer pursuant to revisions required herein and/or by the Plan Commission:

- a. Architectural plan set dated (revised) December 14, 2023
 - b. Engineering plan set dated February 9, 2024 December 12, 2023
 - c. Exterior Lighting plan set dated December 12, 2023
2. Two (2) additional deciduous street trees are required along Clinton Drive (1 per 50 feet of street frontage). All deciduous trees shall have a minimum planting size of 2.5" dia.
3. The minimum amount of on-site parking required for the existing and proposed building addition is twelve (12) parking stalls. The Site plan shall be revised to show a minimum of (12) parking stalls meeting current Village requirements.
3. All landscaping, grading, paving, storm water management, utility and other improvements shown on the approved site plans shall be installed as approved prior to issuance of an occupancy permit for the building addition 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.
4. All issues, plan revisions and technical corrections identified in the January 29, 2024, review memo from the Village Engineer shall be addressed in revised plans and/or supplemental information submitted for review and approval prior to issuance of building permits.
5. The Village Public Works Department/Village Engineer shall be contacted for inspection purposes prior to re-construction of the sampling manhole.

MOTION to Amend Baum second Shadid to modify Condition #2 to put some base plantings along the north side of the building between the sidewalk and the building in lieu of the 2 street trees with approval by staff.

MOTION to Amend carried unanimously.

MOTION to Approve as Amended carried unanimously.

- F. Everett Frenz, Agent for the Anton Frenz Trust & SA Technologies LLC, Property Owners - 65.2 acres east of Fond du Lac Avenue, north of Donges Bay Road. Planned Development District (PDD) Consultation for a 580 to 600-unit Mixed-Use Residential/Commercial Development ("Arbor Village").
(DISCUSSION)

Director Retzlaff reviewed the proposal for a mixed-use residential and commercial development on 65 acres in the Victory Center Corridor. Jeff Groenier, Concepts in Architecture, spoke on the revised concept plan. He said they are looking to create a PDD and have each individual lot zoned for either duplex, 2, 4 or 8 units and then bring those buildings back individually to get approved. They would like a consensus from Plan Commission members tonight if the development is something they want so they can bring the PDD forward. Discussion followed.

Plan Commission members had the following comments:

- Likes part of the development, but can't picture the density on the south end with 2

parking ramps surrounded by that density.

- Equates this development to the twin towers on 41/45. The two 4-story, 100 unit buildings stand up, are monolithic, stick out and don't belong there.
- High density units don't belong at this location and should be located in the central business district where there are more amenities. Can see lower density, garages and 1-2 story buildings on north end. Large apartment buildings don't belong here. Where does high density belong in the Village?
- Is residential the right use for this location, should be a continuation of the industrial park
- The property isn't deep enough to accommodate industrial along railroad and residential further out. 105 unit buildings are a stretch for this area. The 4, 6 or 12 unit buildings could work. Would like to see detailed architectural standards when the PDD is brought forward showing continuity from one phase to the next. Would like to see a Planned Development District implementation plan from another project from architect to use for this project.
- Projection of 600 units and approximately 1200 people puts pressure on the intersection at Hwy 145 and Mequon Road, the roundabout is a racetrack in the morning and the uncontrolled railroad track on Country Aire Road. Country Aire Road would need to be improved. The Village would need to consider auxiliary improvements as the development gets phased in. Agree 4 story, with 100 units is not a good place for it. Want to see more of a transitional neighborhood with a community feel to it. Don't want to be able to tell what year each building was built. Needs continuity and be included as part of the developers agreement.
- What elementary school would kids go to. Would Village need to plow the sidewalks. Need some level of homeowner association for some of the amenities.
- Would it be better to have high density on the east and lower density to the west of the site.
- Higher percentage of ownership is more appealing than rental units.
- 105 units seem out of place, can't picture apartments with a 4 story parking garage.
- Uncomfortable with density at the moment but may need to figure out how to deal with and make it work somewhere.
- OK with residential there, but problem with the density.
- School Board should be included.
- Need all the ancillary things to support development to make decision if 600 units is too dense.
- Some merit to highest and best use is continuation of business park.
- Likes idea of flipping higher density along Fond du Lac further east along railroad tracks.

Mr. Groenier stated he would like to work directly with staff and maybe reduce some of the buildings and change the density a little bit. Chairman Wolter would like some percentages of what is rental versus owned. What would the 105 unit building be replaced with. Director Retzlaff said the two 105 unit buildings need to be replaced with something that makes this a destination neighborhood, maybe an active park. Commissioner Shadid would like to know where some of the developments mentioned are located so he can view them. Director Retzlaff asked if there an expectation there is going to be some financial assistance from the Village on this. Mr. Groenier said they would like to investigate that especially for the roads, entrances, right-of-way and also for the pedestrian paths. That will need to be worked out. Director Retzlaff

requested a projection of school age children.

This item was for discussion only. No action was taken.

- G. Village of Germantown - Ownership Transfer of a 51.6-ac Parcel (GTNV 182-985) from the Milwaukee Metropolitan Sewerage District (MMSD) for Trail System and Open Space Conservation. (ACTION)

Director Retzlaff reviewed the proposal to transfer land to the Village from MMSD for open space conservation and trail development purposes.

MOTION Baum second Shadid to Approve the ownership transfer of the 51.6-acre parcel as proposed.

Commissioner Laszewski explained he had previously worked with MMSD when he was a member of the Park and Rec Commission and that MMSD was very restrictive and obstinate about what could be done with their land purchased under the Greenseams Program. He stated he wouldn't recommend taking ownership of the property because it may be a liability or at the least until the Village's proposal is approved by MMSD. After they approve of everything proposed and it's in writing, then he would recommend approval of the transfer. Director Retzlaff agreed saying that is how it was in the past, but the management of the program for MMSD has changed dramatically and they are now very eager to work with municipalities on the development of trails and environmental signage for these properties.

Chairman Wolter said MMSD has been given the Village's Goldendale Trail plan as proposed and can see there is a parking lot and a pathway. We have outlined the kind of uses we'd like to see for the land. And that its important because it's the start of the recreational path land that monies have been designated from the TIF to help support it for this purpose. We're not hiding anything of how we want to use the land. If they give us an approval and we have an agreement in writing, that should be enough to ensure that the Village will be able keep it in that use.

MOTION carried 6-1 (Laszewski)

- V. **CITIZEN INPUT/PUBLIC APPEARANCE:** *(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.)*

The following residents spoke during public comment:

Sara Larson, W159 N9737 Butternut Road
Neal Risler, N106 W14743 Harrison Circle
Jan Miller, W151 N10297 Windsong Circle W
Melanie Smythe, W140 N17938 Cedar Lane
Scott Heflt, W159 N10514 Old Farm Road

- VI. **ANNOUNCEMENTS:**

None

VII. ADJOURNMENT:

The meeting was adjourned at: 9:31 pm.

ZONING PERMIT REVIEW

3/11/24 Plan Commission Meeting

Dawn DiNicola

Planning & Zoning Report

Germantown, Wisconsin

Summary

Dawn DiNicola, property owner, is seeking approval to install a 4' chain link fence within an existing 8' wide utility & drainage easement on the residential property located at W158 N9763 Sumac Road in the Glenwood Park Subdivision.

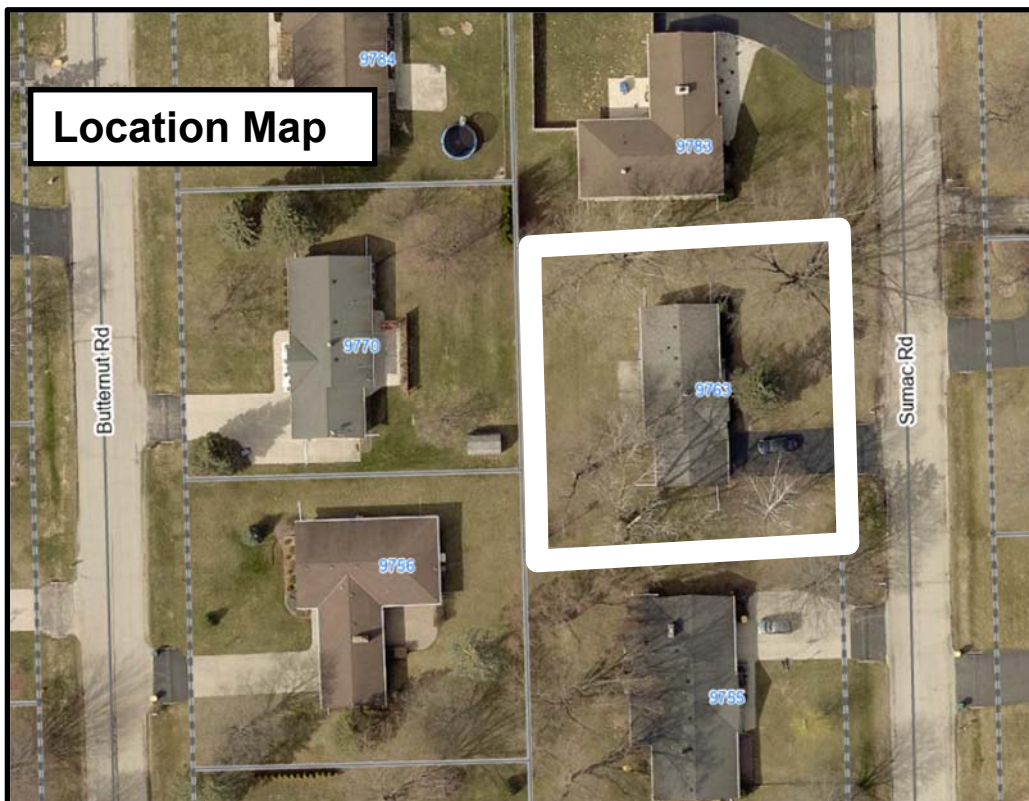
Location: W158 N9763 Sumac Road

Agent/

Property Owners: Dawn DiNicola
W158 N9763 Sumac Road
Germantown, WI

Zoning: Rs-6 Single-Family Residential

Adjacent Land Uses		Zoning
North	Single-Family Residential	Rs-6
South	Single-family Residential	Rs-6
East	Single-family Residential	Rs-6
West	Single-family Residential	Rs-6



Background/Proposal

Dawn DiNicola, property owner, is seeking approval to install a 4' chain link fence within an existing 8' wide utility & drainage easement on the residential property located at W158 N9763 Sumac Road in the Glenwood Park Subdivision.

The fence would be located along the west property line (rear yard), along the north property line (side yard), and along the south (side yard) property line. The fence would be installed on the rear property line and encroach 8' into the utility & drainage easement on the west side of the property parallel to the rear lot line. The drainage easement is a total of 16' wide, with 8' on the DiNicola property and the other 8' on the abutting property to the west.

Staff Comments

As indicated below, Section 17.50(2)(f)6. of the Zoning Code prohibits fences from being installed in any easement, except a drainage easement when approved by the Plan Commission:

(f) Fences in Residential Districts.

1. *All fences shall be subject to review and approval of the Building Inspector prior to the issuance of a building permit.*
2. *Fences in rear or side yards may be up to 6 feet in height.*
3. *Fences in front yards may not exceed 4 feet in height, except a maximum height of 6 feet on approval of the Plan Commission after consideration of visibility, privacy and access concerns.*
4. *No fence shall be closer than 2 feet to a public right-of-way.*
5. *Fences that contain a finished side and an unfinished side, shall be installed in a manner in which the finished side faces the adjacent property. In case of a discrepancy, the Village Building Inspector shall determine which side of the fence is the finished side.*
6. *Fences and easements.*
 - (i) *Fences shall not be located within any type of easement, provided however, the Planning Commission may authorize the encroachment by a fence into a drainage easement where the owner of the land encumbered by the easement shows to the satisfaction of the Planning Commission that, considering the proposed location, design and materials of the proposed fence, the encroachment of the fence into the easement will not materially interfere with drainage flow within the easement, and, in the case of a subdivision, the homeowners association consents in writing to the encroachment, or if not in a subdivision, the adjacent landowners consent in writing.*
 - (ii) *If the Planning Commission deems it necessary in order to make its decision to authorize an encroachment into a drainage easement by a fence, it may require that the applicant provide a report by a professional engineer providing an opinion that the encroachment will not impair drainage flow within the easement.*
 - (iii) *If the applicant whose property abuts the drainage way shall be aggrieved by the decision of the Planning Commission, such aggrieved person may appeal the decision to the Village Board by filing a request for appeal review of the record below within 14 days of the date of the Planning Commission's decision.*
7. *It is the property owner's responsibility for any lawn maintenance of lands that lie between a fence and the property line.*
8. *Should it be necessary that the Village or its agent, remove the fence, the material costs (materials and labor) would be borne by the owner of the fence.*

As indicated above, the Planning Commission may authorize the encroachment of a fence into a drainage easement where the owner of the property encumbered by the easement shows to the satisfaction of the Planning Commission that:

1. considering the proposed location, design and materials of the proposed fence, the fence will not materially interfere with drainage flow within the easement; and
2. in the case of a subdivision, homeowners association consent to the encroachment or, if not a subdivision, the adjacent landowner(s) written consent.

Regarding Item #1, drainage flow interference, the open-style wire-woven cyclone fence would sit approximately 2 inches above grade and would not restrict or divert any water flow.

Regarding Item #2, there is no active Homeowner's Association for the Glenwood Park Subdivision. However, DiNicola has obtained conditional approval to install the proposed fence in the utility easement from WE Energies (see December 1, 2023 letter with conditions of approval).

According to the Superintendent of Highways, Parks, Buildings & Grounds, there is no storm sewer infrastructure located in the drainage easement. The Village Engineer recommends that the fence be installed outside of the 8' easement to eliminate any potential conflicts if access or work in the easement is required in the future. As an alternative, a recommended condition of approval should be to require the property owner to be responsible (and NOT the Village) for any costs associated with the repair and/or replacement of the fence and any work conducted within the drainage easement that impacts the fence or requires the fence to be removed and/or replaced.

VILLAGE STAFF RECOMMENDATION

APPROVE the zoning permit application to install a 4' high chain link fence within the 8' utility & drainage easement on the residential property located at W158 N9763 Sumac road subject to the following conditions:

1. It shall be the responsibility of the homeowner to always maintain a free flow of water within the drainage easement.
2. 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.
3. The property owner shall enter into an encroachment agreement with the Village for purposes of attaching the requirements of Condition #2 above to ensure that the property owner and any successors in interest are aware of these requirements.
4. A fence permit is required from Inspection Services prior to installation. Contact SAFEBuilt for more information.



Village of
Germantown
Willkommen

ZONING COMPLIANCE/
OCCUPANCY PERMIT

Date of Application: 12-19-23

Fee Received By: \$

Please read and print legibly. List name of actual contact person (NOT just business name).

APPLICANT OR AGENT:

Name: DAVID DI NICOLA

Address: 5066 HORIZON CT.

City/State/Zip: WEST BEND WI 53095

Phone: 920.912.0910

E-Mail: deeds68@hotmail.com

PROPERTY or Business OWNER:

Name: self

Address:

City/State/Zip:

Phone:

E-Mail:

PROPERTY ADDRESS OR Tax Parcel ID#:

W158 N9763 SUMAC AVE.

DESCRIPTION OF PROPOSED USE (Describe improvements, structures, uses and activities conducted, services provided, products made or sold, # of employees, hours of operation, etc. that will enable Zoning Administrator to determine if the proposed use or operation complies with the applicable zoning district and/or other use restrictions that may apply to the subject property. Use back side or additional sheets as needed):

see attached

READ AND INITIAL THE FOLLOWING:

☒ I understand that Village Staff may request additional information to properly evaluate this request and failure to provide such information may in itself be sufficient cause to deny the petition.

☒ I understand that Village Staff can impose conditions or other requirements necessary in order to meet and/or remain in compliance with the Village's Zoning Codes and/or other Village requirements that may apply to the subject property.

INCLUDE THE FOLLOWING WITH YOUR APPLICATION:

- ☒ A scaled site plan showing location of proposed use on the property (not required if within building).
- ☒ \$175 Application Fee
- ☐ Other Information required by Zoning Administrator

SIGNATURES: ALL APPLICATIONS MUST BE SIGNED

Applicant

Date

Property Owner

Date

VILLAGE USE ONLY

Germantown Plan Commission

Zoning compliance permit application for Dawn DiNicola, W158 N9763 Sumac Rd.

Description of proposed use: I am requesting approval so that I am able to install a four-foot-tall chain-link fence on the perimeter of my back yard, where there is an eight-foot utility and drainage easement on the west lot line. I obtained approval - with conditions - from WE Energies and have reconfigured my fence plan so that it complies with those conditions. The property is not part of a subdivision or HOA, the fence will support the free flow of water through the easement, and it will be installed by A to Z Quality Fencing LLC.

~~~~~  
December 6, 2023

Dear Germantown Plan Commission:

I am writing because I am hoping to be able to put up a fence in the back yard of a home I recently purchased, where I understand there is an eight-foot utility and drainage easement. I have already submitted the required building permit application and survey, and I obtained conditional approval from WE Energies. I am now requesting your approval because the fence would (ideally) go through the drainage easement on the property.

My dogs – three St. Bernards – are the reason I wish to fence my back yard. They currently have an acre that is fenced to run around and play in, and our new property is only .34 acres... so I am really hoping to be able to maximize that space for them. Having an eight-foot setback, losing that space across the back of the lot, would honestly make me rethink even moving in to the home. Your approval to put the fence on the lot line through the drainage easement would make a huge difference for my big creatures.

Enclosed are the letter from WE Energies and a survey of the property with my proposed fence location outlined. The fence will have an eight-foot gate for vehicle access, just in case, and because I am doing chain-link fencing, there will be no impediments to proper drainage. As an aside, restricting proper drainage in my back yard would NOT be in my best interest either... that would be a mudhound nightmare.

Thank you for your consideration and anticipated approval!

Sincerely,



Dawn DiNicola



We Energies  
231 W. Michigan St. Milwaukee, WI  
53203  
[www.we-energies.com](http://www.we-energies.com)

December 1, 2023

Ms. Dawn Dinicola  
W158N9763 Sumac Road  
Germantown WI 53022

SUBJECT: ENCROACHMENT OF EASEMENT WITH FENCE  
LOT 9 BLK 8 GLENWOOD PARK

Dear Dawn:

Your request to construct a fence on the property located at the above address in the Village of Germantown, Washington County, Wisconsin has been reviewed.

Wisconsin Electric Power Company, a Wisconsin corporation, doing business as We Energies, has no objection to the construction of the fence you propose in proximity to our facilities as long as the following conditions are met:

1. Digger's Hotline must be called a minimum of 3 working days prior to the onset of any digging or excavation. They will mark all underground utilities in the area of the construction. Their number is 1-800-242-8511 or you may dial 811. No work can commence prior to Digger's marking of all underground utilities.
2. Fence posts must be a **MINIMUM** of 24 inches from any marked underground cables on or your property or next door. For safety reasons we recommend staying 36 inches from any marked cables. More clearance may be needed when using power equipment.
3. The fence must be 3 feet away from any pedestal whether it is on your property or next door (pedestals measure approximately 7" by 7" and stand about 30" tall).
4. The fence must be at least 10 feet away from the door side of any pad-mounted transformer and at least 3 feet away from its other sides whether the pad-mounted transformer is on your property or next door (transformers are larger, square in shape and sit on a concrete pad. The door is the side with the padlock on it).
5. If a pole is enclosed on your property, maintain a 4 foot clearance around all sides of the pole, so that a utility worker would be able to safely access and climb the pole.
6. A minimum 10 foot clearance must be maintained from the closest electric line to the structure.
7. A minimum 10 foot working clearance horizontally and 15 feet vertically must be maintained.

Finally, please be aware that Wisconsin Electric Power Company must have access to its facilities for routine and emergency maintenance, repairs and replacement. Should the fence be constructed in such a way to make access difficult or impossible, a portion of the fence may be removed to provide adequate access to our facilities. It is advised you install removable sections near above ground equipment, including utility poles. Wisconsin Electric Power Company will not be liable for the reconstruction of the fence or any damages to the fence. Please note there may be other utility facilities in the area as well. You will need to contact them separately with respect to their clearance requirements.

Please feel free to call me at 414-221-3969 if you have any further questions or concerns.

Sincerely,

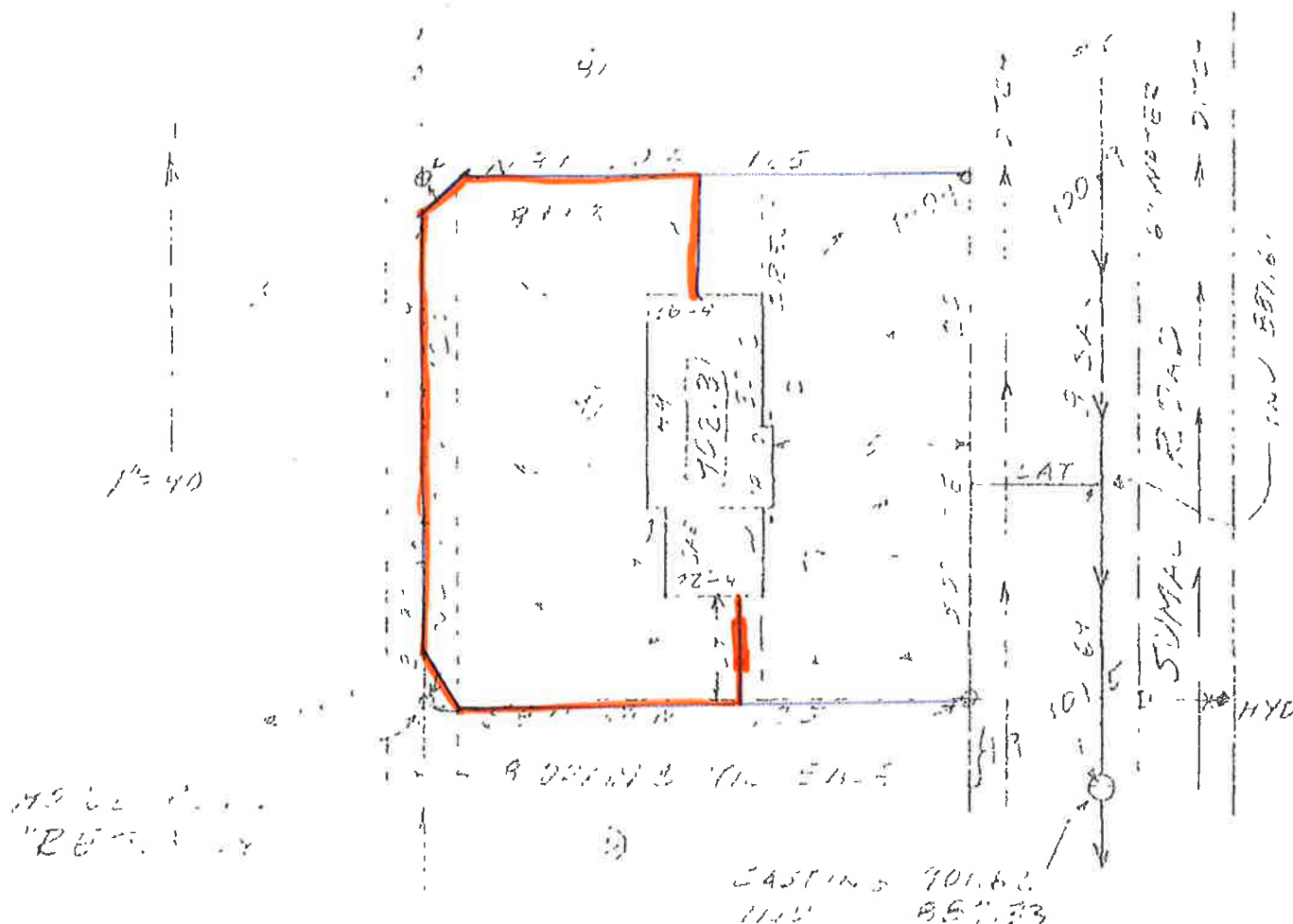
*Laura Galicia*

Laura Galicia  
OAIII

# PLAT OF SURVEY

Owner: Chudnow Construction Company, 845 N. 11th Street, Milwaukee, Wisconsin

August 16, 1965



METRO ENGINEERING COMPANY  
P. O. Box 249 Phone 251-7100  
Menomonee Falls, Wisconsin

Alfred Wickesberg  
Surveyor S-53

# ZONING PERMIT REVIEW

3/11/24 Plan Commission Meeting

## Rob & Coral Kline

Planning & Zoning Report

Germantown, Wisconsin

### Summary

Rob & Coral Kline, property owners, are seeking approval to install a 6' vinyl privacy fence within an existing storm sewer easement on the residential lot located at W156 N10876 Catskill Lane in the Legend Acres subdivision.

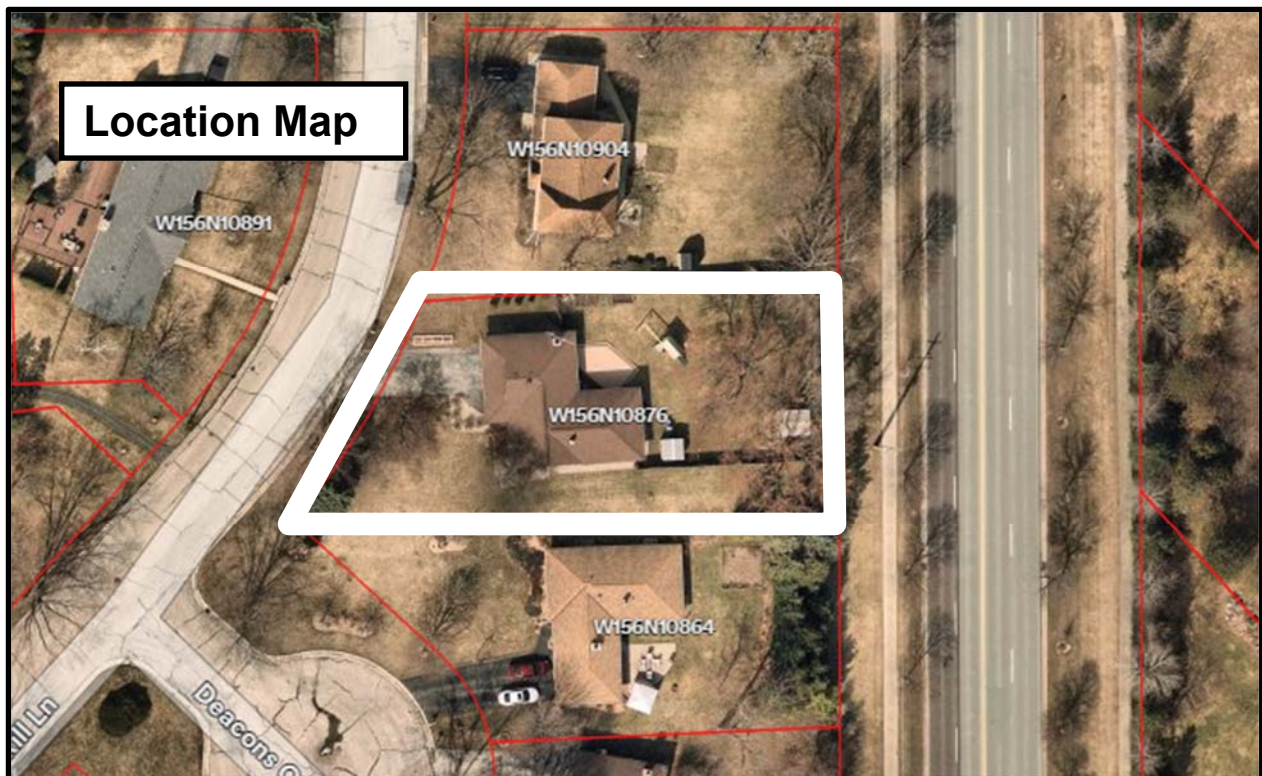
**Location:** W156 N10876 Catskill Lane

**Agent/**

**Property Owners:** Rob & Coral Kline  
W156 N10876 Catskill Lane  
Germantown, WI 53022

**Zoning:** Rd-2 One & Two-Family Residential

| Adjacent Land Uses |                           | Zoning |
|--------------------|---------------------------|--------|
| North              | One & Two-Family          | Rd-2   |
| South              | One & Two-Family          | Rd-2   |
| East               | Single-family Residential | Rs-5   |
| West               | Single-family Residential | Rs-7   |



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**Background/Proposal**

Rob & Coral Kline, property owners, are seeking approval to install a 6' vinyl privacy fence within an existing storm sewer easement on the residential lot located at W156 N10876 Catskill Lane in the Legend Acres subdivision.

As indicated in their supporting information, the applicant would like to install a 6' high vinyl privacy fence around the back yard to replace a dilapidated wooden privacy fence and extend the new fence into a 10' sewer easement located along the south property line (see attached aerial photo and survey). The fence would encroach into the storm sewer easement approximately 3'-5' on the south side of the property. According to the Director of Highways, Parks, Buildings & Ground, there is a 12" storm sewer installed underground within the 10' easement.

As indicated below, Section 17.50(2)(f)6. of the Zoning Code prohibits fences from being installed in any easement, except a drainage easement when approved by the Plan Commission:

*(f) Fences in Residential Districts.*

1. *All fences shall be subject to review and approval of the Building Inspector prior to the issuance of a building permit.*
2. *Fences in rear or side yards may be up to 6 feet in height.*
3. *Fences in front yards may not exceed 4 feet in height, except a maximum height of 6 feet on approval of the Plan Commission after consideration of visibility, privacy and access concerns.*
4. *No fence shall be closer than 2 feet to a public right-of-way.*
5. *Fences that contain a finished side and an unfinished side, shall be installed in a manner in which the finished side faces the adjacent property. In case of a discrepancy, the Village Building Inspector shall determine which side of the fence is the finished side.*
6. *Fences and easements.*
  - (i) *Fences shall not be located within any type of easement, provided however, the Planning Commission may authorize the encroachment by a fence into a drainage easement where the owner of the land encumbered by the easement shows to the satisfaction of the Planning Commission that, considering the proposed location, design and materials of the proposed fence, the encroachment of the fence into the easement will not materially interfere with drainage flow within the easement, and, in the case of a subdivision, the homeowners association consents in writing to the encroachment, or if not in a subdivision, the adjacent landowners consent in writing.*
  - (ii) *If the Planning Commission deems it necessary in order to make its decision to authorize an encroachment into a drainage easement by a fence, it may require that the applicant provide a report by a professional engineer providing an opinion that the encroachment will not impair drainage flow within the easement.*
  - (iii) *If the applicant whose property abuts the drainage way shall be aggrieved by the decision of the Planning Commission, such aggrieved person may appeal the decision to the Village Board by filing a request for appeal review of the record below within 14 days of the date of the Planning Commission's decision.*
7. *It is the property owner's responsibility for any lawn maintenance of lands that lie between a fence and the property line.*
8. *Should it be necessary that the Village or its agent, remove the fence, the material costs (materials and labor) would be borne by the owner of the fence.*

---

**Staff Analysis**

As indicated above, the Planning Commission may authorize the encroachment of a fence into a drainage easement where the owner of the property encumbered by the easement shows to the satisfaction of the Planning Commission that:

1. considering the proposed location, design and materials of the proposed fence, the fence will not materially interfere with drainage flow within the easement; and
2. in the case of a subdivision, homeowners association consent to the encroachment or, if not a subdivision, the adjacent landowner(s) written consent.

Regarding Item #1, drainage flow interference, the easement is for the purpose of the underground storm sewer and not the flow of storm water across the ground surface. Consequently, the fence would not interfere with overland storm water flow.

Regarding Item #2, there is no active homeowner's association (HOA) for the Legend Acres subdivision.

The Director of Highways recommends that extreme caution be taken when installing the fence because the exact location and depth of the 12" storm sewer within the easement is not known. The Director is recommending that the Village be held harmless in the event the fence needs to be removed for any reason and be made responsible for any costs associated with removal and/or replacement.

The subject parcel is a "double frontage lot" with direct frontage on Catskill Lane (to which the dwelling faces and accesses) and along Pilgrim Road. By definition, double and three-sided lots in residential districts are deemed to have one front yard on the street to which the dwelling faces and one rear yard. Any other yard that is not a front or rear yard shall be deemed to be a side yard for purposes of determining the type, height, location and setback requirements for accessory buildings and fences to be installed on any double frontage lot. For this property, the Pilgrim Road yard is a rear yard within which the privacy fence can be up to 6' high.

|                                     |
|-------------------------------------|
| <b>VILLAGE STAFF RECOMMENDATION</b> |
|-------------------------------------|

**APPROVE** the zoning permit application to install a 6' vinyl privacy fence within the storm sewer easement along the south line of Kline property located at W156 N10876 Catskill Lane subject to the following conditions:

1. The fence shall be installed a minimum setback of 2 feet from the Pilgrim Road right-of-way/property line and the bottom of the boards a minimum of 2 inches above the finished grade.
2. It shall be the responsibility of the homeowner to maintain a free flow of water within the private drainage easement at all times.
3. A fence permit is required from the Building Inspection Department. Contact SafeBuilt for more information.
4. 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 all costs associated with removing the fence to the extent necessary within seven (7) days of being notified by the Village (or another mutually agreeable deadline). The property owner shall be responsible for any and all costs associated with any damage, removal or re-installation of said

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fence.

5. The property owner shall enter into an encroachment agreement with the Village for purposes of attaching the requirements of Condition #4 above to ensure that the property owner and any successors in interest are aware of these requirements.
6. The property owner and/or fence installer shall be responsible for locating and visually marking the 12" storm sewer location within the easement at least three (3) business days prior to installation and contacting the Village Engineer once marked. The property owner and/or fence installer shall be liable for any and all damage to the storm sewer and all site restoration within the easement.



Village of  
Germantown  
Willkommen

ZONING COMPLIANCE/  
OCCUPANCY PERMIT

Date of Application: 1/24/24

Fee Received By: [Signature]

Please read and print legibly. List name of actual contact person (NOT just business name).

APPLICANT OR AGENT:

Name: Rob Kline  
Address: W156 N10876 CATSKILL LANE  
City/State/Zip: GERMANTOWN, WI 53022  
Phone: 414.551.1944  
E-Mail: robertjohn.kline@gmail.com

PROPERTY or Business OWNER:

Name: Rob + Coral Kline  
Address: W156 N10876 CATSKILL LANE  
City/State/Zip: GERMANTOWN, WI 53022  
Phone: 414.551.1944  
E-Mail: robertjohn.kline@gmail.com

PROPERTY ADDRESS OR Tax Parcel ID#:

GTNV\_271024

**DESCRIPTION OF PROPOSED USE** (Describe improvements, structures, uses and activities conducted, services provided, products made or sold, # of employees, hours of operation, etc. that will enable Zoning Administrator to determine if the proposed use or operation complies with the applicable zoning district and/or other use restrictions that may apply to the subject property. Use back side or additional sheets as needed):

We propose replacing a dilapidated fence with another fence. It would be a 6' white vinyl privacy fence instead of the 6' cedar fence. The southern fence portion would be extended to better allow for our small children (and future dog) to play in the larger yard with lessened impact from Pelgrim Rd car and foot traffic. The neighbors both approve, as does the Legend Acres HOA.

READ AND INITIAL THE FOLLOWING:

- ☒ I understand that Village Staff may request additional information to properly evaluate this request and failure to provide such information may in itself be sufficient cause to deny the petition.
- ☒ I understand that Village Staff can impose conditions or other requirements necessary in order to meet and/or remain in compliance with the Village's Zoning Codes and/or other Village requirements that may apply to the subject property.

INCLUDE THE FOLLOWING WITH YOUR APPLICATION:

- ☒ A scaled site plan showing location of proposed use on the property (not required if within building).
- ☒ \$175 Application Fee
- ☐ Other Information required by Zoning Administrator

SIGNATURES: ALL APPLICATIONS MUST BE SIGNED

Robert J. Kline  
Applicant  
Robert J. Kline  
Property Owner

1/23/2024  
Date  
1/23/2024  
Date

VILLAGE USE ONLY

Germantown Planning Commission,

The reason for replacing and extending our current fence is two fold: to replace the dilapidated cedar fence with a white vinyl fence that matches the new siding, and to extend the usable yard on the south side into the storm sewer easement.

The current south fence section leaves an unused yard section on the other side. We would like to maximize our backyard space for our kids (and future dog) to play, while maintaining privacy from Pilgrim Road vehicle and foot traffic. If we are unable to move the fence into the storm sewer easement, we would lose over 1,100 sq ft of yard and keep it nonfunctional.

Thank you for your consideration and please reach out with any questions or if further documentation is needed.

Rob & Coral Kline

Proposed



### Village of Germantown GIS

#### DISCLAIMER:

This map is not a survey of the actual boundary of any property this map depicts.

The Village of Germantown Does not guarantee the accuracy of the material contained here in and is not responsible for any misuse or misrepresentation of this information or its derivatives.



**Village Of Germantown**  
N112 W17001 Mequon Road  
Germantown, WI 53022  
262-250-4700



SCALE: 1 = 27'

Print Date: 1/23/2024

Existing



### Village of Germantown GIS

#### DISCLAIMER:

This map is not a survey of the actual boundary of any property this map depicts.

The Village of Germantown Does not guarantee the accuracy of the material contained here in and is not responsible for any misuse or misrepresentation of this information or its derivatives.



Village Of Germantown  
N112 W17001 Mequon Road  
Germantown, WI 53022  
262-250-4700



SCALE: 1 = 27'

Print Date: 1/23/2024

Google Maps ~~10926~~ Pilgrim Rd

Germantown, Wisconsin

Google Street View

Aug 2023

See more dates



Image capture: Aug 2023 © 2024 Google





**DDFENCING.com**

262-343-2108

6820 N Trenton Rd West Bend WI 53090

NAME: Rob Kline

EMAIL: Klinejunk@gmail

ADDRESS: W156N10876 Catskill Lane, Germantown

PHONE: 414-751-0872

Referred by:

Footage: 299'

Style: White Vinyl Privacy

Height 6'

Gates: 1 single @ 4', 1 double @ 8'

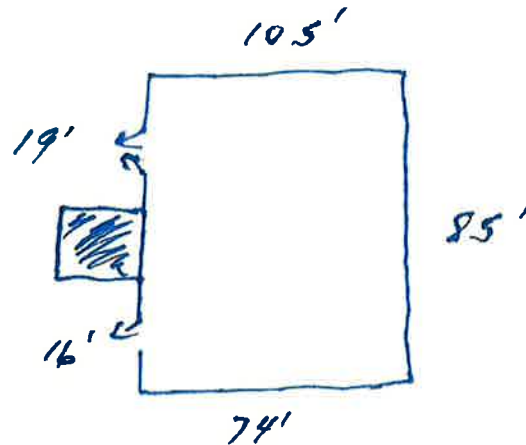
Posts: pounded

Level or grade grade

Tear out/removal: NO

Special instructions:

layout



We propose to supply materials and labor/based on the above specifications for the amount of:

Installed: \$ 18,300.00

Terms: upon completion: service charge of 1.5% per month after due date

Down Payment \$ 9,150.00

Final Payment: 9,150.00

Customer to handle the permit and boundaries of there property. Diggers hotline will be covered by D&D Fence. We must stay 24" off of buried utilities with power digging machines and 18" for any other reason. If we go closer then the 24" we must hand dig those holes. Customer will accept all responsibility In the case we dig closer to 18" near buried utilities. All of our employees are covered by workers compensation.

Customer signature: \_\_\_\_\_

Date: \_\_\_\_\_

D&D Signature: [Signature]

Date: 15 Jan 2024

PLAT OF SURVEY

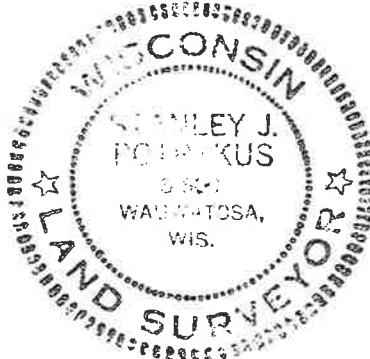
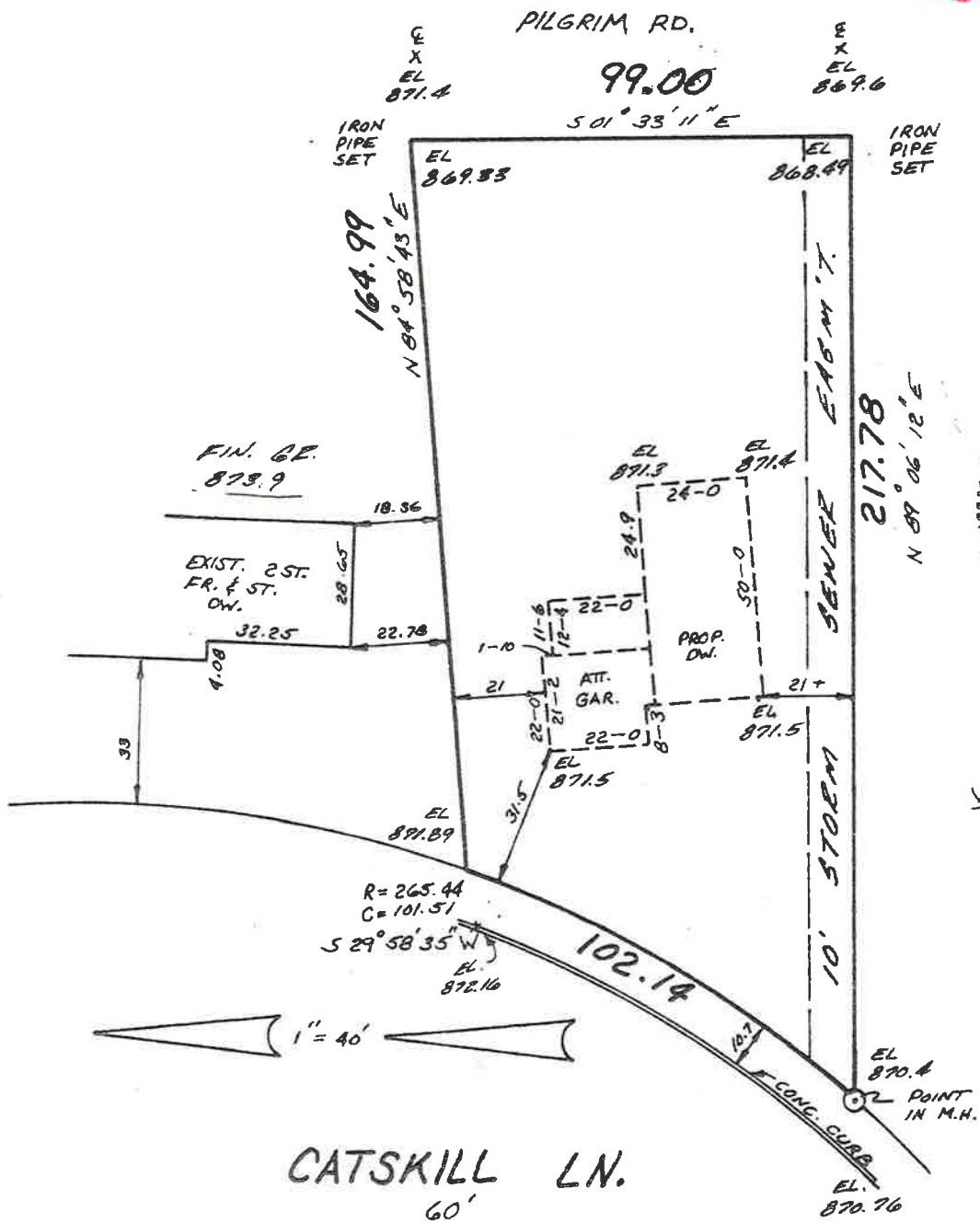
LOCATION: CATSKILL LANE, GERMANTOWN, WISCONSIN

LEGAL DESCRIPTION: LOT 24 IN BLOCK 1 IN LEGEND ACRES, BEING A SUBDIVISION OF A PART OF THE NE 1/4 OF SECTION 27, T 9 N, R 20 E, IN THE VILLAGE OF GERMANTOWN, WASHINGTON COUNTY, WISCONSIN.

FEBRUARY 15, 1977  
GRADES REV. & EASEMENT  
ADDED 4/19/77

SURVEY NO. 50967

*Fin yd grade  
872.5*



I HEREBY CERTIFY THAT I HAVE SURVEYED THE ABOVE DESCRIBED PROPERTY AND THAT THE ABOVE MAP IS A TRUE REPRESENTATION THEREOF AND SHOWS THE SIZE AND LOCATION OF THE PROPERTY, ITS EXTERIOR BOUNDARIES, THE LOCATION OF ALL VISIBLE STRUCTURES AND DIMENSIONS OF ALL PRINCIPAL BUILDINGS THEREON, BOUNDARY FENCES, APPARENT EASEMENTS AND ROADWAYS AND VISIBLE ENCROACHMENTS, IF ANY.

THIS SURVEY IS MADE FOR THE EXCLUSIVE USE OF THE PRESENT OWNERS OF THE PROPERTY, AND ALSO THOSE WHO PURCHASE, MORTGAGE, OR GUARANTEE THE TITLE THERETO WITHIN ONE (1) YEAR FROM DATE HEREOF.

**METROPOLITAN SURVEY SERVICE, INC.**  
REGISTERED LAND SURVEYORS  
611 N. MAYFAIR RD. WAUKESHA, WIS. 53226  
453-9151

*[Signature]*  
STANLEY J. POTRYKUS  
REGISTERED LAND SURVEYOR - S-900

# CONDITIONAL USE PERMIT

3/11/24 Plan Commission Meeting

## Mark Brooks / Das Barrel Room

Village Planner Report

Germantown, Wisconsin

### Summary

Mark Brooks, operator of Das Barrel Room, and agent for Doctors LLC and Julie Kind, representative for the property owner, is requesting approval of an amendment to Conditional Use Permit (CUP) #13-2019 to expand the existing off-site parking area located on the vacant 2.1-acre parcel adjacent to W201 N10466 Appleton Avenue.

**Property Location:** W201 N10466 Appleton Avenue

### Applicant/

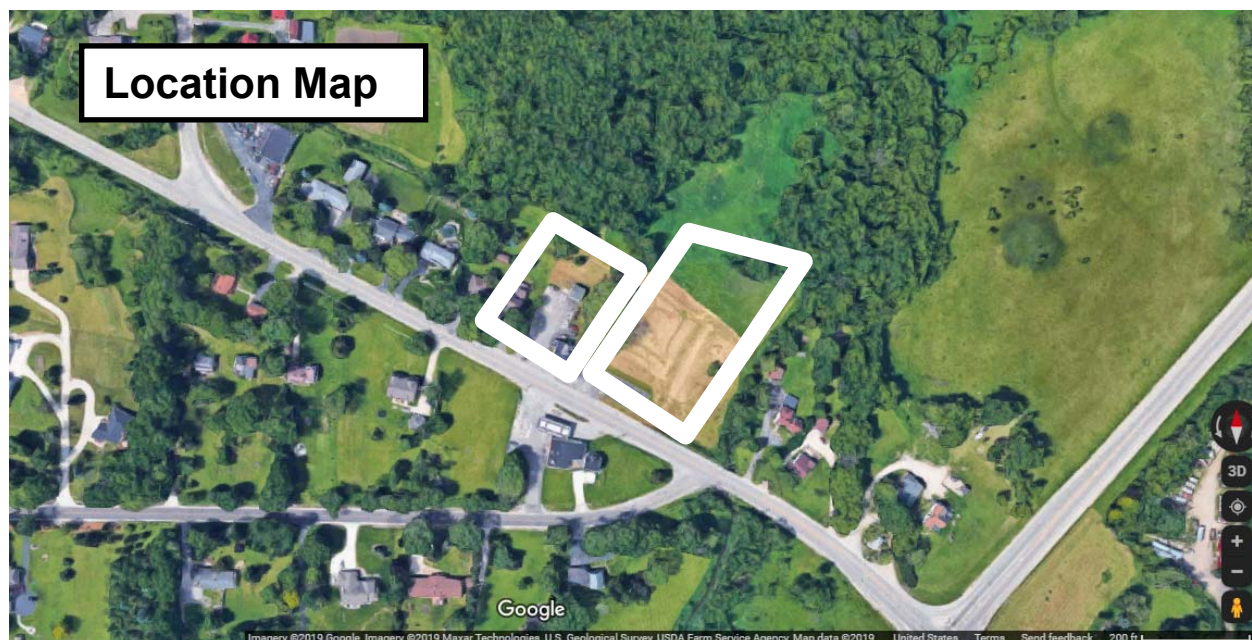
### Property Owner:

Mark Brooks  
Restaurant/Bar Operator  
N52 W14018 Aberdeen Dr  
Menomonee Falls, WI

Julie Kind  
Doctors LLC  
W206N10515 Appleton Ave  
Germantown, WI 53022

**Current Zoning:** B-3: General Business & B-1: Neighborhood Business

| Adjacent Land Uses |              | Zoning    |
|--------------------|--------------|-----------|
| North              | Agricultural | A-2       |
| South              | Commercial   | B-3       |
| East               | Residential  | Rs-4      |
| West               | Residential  | Rs-4/Rd-2 |



---

**Background**

At the October 9, 2023 meeting, the Plan Commission conducted (and closed) a public hearing of the proposed CUP amendment before discussing and eventually tabling action on the request.

Action was tabled and direction given to Mark Brooks to gather more information and submit it to the PC for further consideration; including the wetland boundary, existing and potential grading, other alternatives for driveway access to the proposed parking area, engineered drawings, etc. Since the October PC meeting, Brooks retained the services of a professional civil engineer, Dan Naze, and professional surveyor, Bob Beilfuss, to evaluate the site and prepare alternative site plans for the proposed parking area.

It's important to point out that the site plans for the two parking area options were prepared with the underlying goal of keeping the amount of new impervious area under 5,000 sqft to avoid the additional cost of preparing a storm water management plan and the possible construction of any "green infrastructure" or other storm water management facilities as part of the parking lot expansion on the site (e.g. swales, basins).

For tonight's meeting, Brooks has submitted the following three plan sheets and parking area options:

- Sheet 1 Base Map
- Sheet 2 Option 1 – Existing Gravel
- Sheet 3 Option 2 – Code Compliant w/ Pavement

**Base Map**

The wetland boundary and 75' navigable waterway setback is shown on the base map. Only a small part of the existing gravel encroaches into the 75' waterway setback. Although a separate wetland delineation was not conducted, existing data from the DNR & DOT was available that generally confirms the wetland boundary is not compromised by the existing gravel. As a result, the two parking area options were prepared with the intention of removing and restoring the small area of gravel encroachment and keeping all new parking area features outside the wetland and waterway setbacks.

**Option 1 – Existing Gravel**

Consistent with the original CUP amendment request, Option 1 utilizes the existing gravel for the new parking area combined with the existing non-conforming paved parking area along Appleton Avenue. Since the existing non-conforming parking area was installed before 1970, it is not included in the total amount of impervious area for the new 56' x 72' parking area and 16' wide connecting driveway. Option 1 includes removing some of the existing gravel and restoring those areas (see hatching on Sheet 1). Option 1 would add approximately 12-14 stalls to the existing 15 stalls east of the building (the non-conforming paved area).

Brooks has indicated that, while he and the owner would prefer that the new parking area be allowed to remain as gravel, they would pave the new parking area and connecting driveway if they are not required to bring the existing paved area into code compliance. Option 1 is estimated to cost \$25-\$35K for gravel only or \$35-\$60K for pavement (estimates provided by Brooks based on conversations with his construction contractor).

**Option 2 – Code Compliant w/ Pavement**

Option 2 is a new paved parking area that incorporates a portion of the existing non-conforming pavement into an overall parking area that meets code requirements for setbacks and pavement. Option 2 provides a total of 14 stalls (one fewer than the existing non-conforming paved area) utilizing the existing Appleton Ave driveway with a one-way counterclockwise circulation pattern.

Brooks has indicated that Option 2 is not a viable option given that it provides no additional parking (in fact one stall less) when compared to the existing 15 stalls east of the building (the non-conforming paved area). Option 2 is estimated to cost \$55-\$65K (estimates provided by Brooks based on conversations with his construction contractor).

**\* \* \* THE FOLLOWING IS REPEATED FROM THE ORIGINAL OCTOBER 9, 2023  
STAFF REPORT & RECOMMENDATION \* \* \***

Mark Brooks, operator of Das Barrel Room, and agent for Doctors LLC and Julie Kind, representative for the property owner, is seeking approval of an amendment to Conditional Use Permit (CUP) #13-2019 to expand the existing off-site parking area located on the vacant 2.1-acre parcel adjacent to W201 N10466 Appleton Avenue.

In May 2019, Mark Brooks was issued a Zoning Permit (copy attached) to re-open the former Doctors Pub (a.k.a. the Public House) on Appleton Avenue near the Willow Creek intersection. The existing building was remodeled for use as the “Das Barrel Room”... an upscale restaurant/bar. The owner/operator proposed use of the existing paved area (approximately 4,800 sqft) on the adjacent undeveloped parcel to the east for additional parking (also owned by Doctors LLC). Although the paved parking area and separate driveway are located almost entirely on the adjacent parcel, this paved area has been used historically for parking purposes for previous bar operations (and a violation of the Zoning Code since 2013).

In order to resolve this long-standing code compliance issue, a condition of Zoning Permit approval for the Das Barrel Room approval was to prohibit parking on the adjacent paved parking area unless the owner/operator remedied the situation by either combining the two parcels into one, thereby legally attaching the paved parking area to the restaurant/bar parcel, or, obtain a conditional use permit (CUP) for an “off-site parking” area that can be permitted under Section 17.45(5) of the Zoning Code.

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While both the restaurant/bar parcel (.9 acres and zoned B-3) and the adjacent parcel (2.1 acres and zoned B-1) are/were under the same ownership (Doctors LLC), the property owner did not want to combine the two parcels. Consequently, the owner/operator applied for and was granted CUP #13-2019 (copy attached).

As stated under Condition #1 of CUP #13-2019, the owner/operator is allowed to use the existing 4,800 sqft paved area “as is” for parking. Condition #2 provides that only general maintenance of the parking area is allowed (e.g. sealcoating, crack-filling, stripping). Condition #3 provides that the parking area MAY be expanded subject to going through the CUP amendment process and re-construction of (or other modifications necessary to) the existing parking area to make the entire parking area (existing and any expansion) compliant with all setback, landscaping, and other code requirements in effect at the time of expansion.

Until this spring, the owner/operator has used the “off-site parking area” in compliance with the terms of CUP #13-2019. However, in late May, Staff issued Code Violation Notice #2023-05-01 to both the owner, Doctors LLC, and the operator, Mark Brooks, for violating the terms of CUP #13-2019 and two other Building & Electrical Code violations (both of which have since been resolved by obtaining the necessary building permits, paying the triple fee fines, and correcting the violations).

With respect to CUP #13-2019, Brooks hired a contractor to install a large amount of gravel on the adjacent parcel to expand the area available for patron parking without obtaining approval from the Village (Condition #2). The illegally expanded parking area is shown on the attached site plan and photos provided in the CUP amendment application by Brooks.

Since the Code Violation Notice was issued, Brooks has been working with Village Staff and the property owner to apply for an amendment to the CUP that could allow the expanded parking to remain if approved by the Village. Until the CUP amendment has been reviewed and acted on by the Village, Staff has deferred enforcement of the code violation. If the Village Board does not approve an amendment to the CUP that would allow the off-site parking area to be expanded as proposed, the code violation will be enforced and the owner/operator will have to remove the gravel and restore the adjacent property to the previous condition.

**Proposal**

As stated in his CUP amendment application, Brooks is requesting: (1) that the gravel area already installed be allowed to remain as an expansion to the previously approved off-site parking area; and (2) that the expansion area is NOT required to be paved (a standard requirement in the Zoning Code for parking areas serving commercial properties).

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**Staff Comment****Planning & Zoning**

CUP #13-2019 was granted with the understanding and requirements that the pre-existing 4,800 sqft non-conforming paved parking area could be used “as is” (with an allowance for general maintenance) and that any expansion would trigger the need to re-construct the entire parking area to be meet current code requirements. Why? Because the existing paved area encroaches into Appleton Avenue right-of-way. In fact, the front of the existing building is only 3-5 feet setback from the right-of-way. When WisDOT re-constructed Appleton Ave in this vicinity as part of the larger round-about construction at Lannon Road, the existing paved area was allowed to remain as a legal non-conforming use. The existing driveway apron was replaced in the same location and width. Consequently, there is not sufficient space between the existing pavement and property line within which any landscaping or other code required improvement could be made that would further separate the parking area from the travel lanes (i.e. 5’ minimum parking lot setback and landscaped buffer). Allowing the pre-existing parking lot to be used “as is” unless and until it is expanded is both reasonable and typical for the ongoing use of non-conforming structures.

The primary paved parking area exists on the west side of the building on the restaurant/bar parcel. Historically, the number of parking stalls available in both areas combined has been sufficient to meet the demand for previous bar business. Clearly, Das Barrel Room has become a popular attraction with the need for additional parking either on site or off to keep patrons from parking on Appleton Avenue/STH175. Consequently, and with tacit “approval” from the operator, patrons began parking on the adjacent parcel and beyond the limits of the Village-approved paved parking area on a regular basis as the business has grown in popularity. Doing so led the operator to install the gravel and expand the off-site parking area (albeit without the required Village approval).

This property and the gas station across the road are the last or furthest west parcels within the “Lannon-Mequon Road Corridor” around the Appleton Avenue @ Lannon road intersection under the 2050 Plan. Commercial uses such as this are deemed to be “desirable” uses for the corridor. However, given Appleton Avenue’s history as a major north-south arterial route that existed prior to the construction of US41, the area developed with a mix of highway-oriented commercial and small-lot residential uses that is slowly evolving into a more residential than commercial corridor. Unfortunately, the pre-1970’s pattern of land division and development in this vicinity does not include nor reflect much, if any, conscious attempt at separating incompatible uses or providing landscaping and other visual or sound attenuating buffers.

Also, for those that may not be aware, the growing popularity of Das Barrel Room and its current business model that includes regular extended weekend indoor (7:30 to 11:30pm) and outdoor (6:00 to 10:00pm) musical entertainment, has resulted in increased sound levels affecting the surrounding neighborhood. While CUP #13-2019 does not (and cannot) be used to effectively address anything other than “off-site parking”, it’s reasonable to assume that the size and amount of parking available to

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patrons can/does have a relationship to sound levels associated with the Das Barrel Room operations ... either directly (with space for more patrons to come and sit outside and sing, clap, cheer, and generally have louder fun) or indirectly (by enabling and supporting more popular outdoor entertainment).

Notwithstanding the issue of sound levels that can/should be addressed through the Village's noise regulations (if noise violations are occurring), Staff supports the concept of allowing the installation of additional parking for the business.

However, whether that additional parking is provided within the restaurant/bar property (there is space available on the north side of the bar property for additional parking) or as an expanded "off-site" parking area on the adjacent parcel, the additional and existing "off-site" parking areas should be required to meet all current Zoning Code and development requirements, including all setback requirements, pavement and storm water management requirements, and landscaping and buffering requirements. This is particularly important if the "off-site" parking area is expanded on the adjacent parcel since Willow Creek traverses a portion of the parcel along the east property line. Construction of any expanded parking area should be required to include all necessary storm water quality and quantity management measures to ensure ongoing protection of Willow Creek and any other environmentally sensitive features associated with it in this vicinity.

To that end, the operator/owner should remove and/or modify the illegally expanded "off site" gravel parking area as necessary to accommodate the construction of a code compliant parking area subject of detailed plans reviewed and approved by the Village (that may or may not reflect the exact location or amount of parking area shown in the site plan sketch provided in support of this CUP amendment application).

However, if the Plan Commission and Village Board are inclined to grant the operator's request for the additional gravel (not paved) parking already installed and not require reconstruction of the existing non-conforming paved parking area, the owner/operator should at least be required to prepare the necessary site, grading and storm water management plans for the existing gravel area and make whatever modifications or improvements are necessary for adequate and code compliant storm water management.

#### Village Engineering

If the CUP amendment proposal is approved, the following items are required to be submitted for Site Plan Review prior to permits being issued:

1. Existing site survey stamped by a registered land surveyor;
2. Site, grading and erosion control plans prepared by a registered engineer;
3. If over 5,000 square feet of impervious surface is added (gravel counts as impervious), a green infrastructure plan meeting the requirements of MMSD Chapter 13 is required. Over 10,000 square feet will require a storm water management plan meeting both Village and MMSD requirements.

**VILLAGE STAFF RECOMMENDATION**

**ALTHOUGH ADDITIONAL INFORMATION HAS BEEN PROVIDED THAT INDICATES AN EXPANDED OFF-SITE PARKING AREA (EITHER OPTION 1 OR OPTION 2) CAN BE INSTALLED IN THE LOCATION SHOWN ON THE ALTERNATIVE SITE PLANS, STAFF'S RECOMMENDATION HAS NOT CHANGED.**

**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.

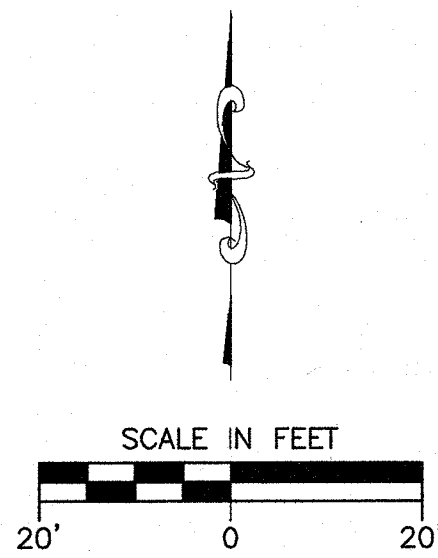
**THE SELF-IMPOSED IMPERVIOUS AREA LIMIT OF 5,000 SQFT IS BASED ON SOLELY ON COST AND THE OWNER/OPERATOR'S DESIRE TO NOT INSTALL ADDITIONAL PARKING THAT WOULD COST OVER A PARTICULAR AMOUNT.**

**BUT FOR THE SELF-IMPOSED COST LIMITATION THAT IS KEEPING THE OWNER/OPERATOR FROM DESIGNING A PARKING AREA OVER 5,000 SQFT, IT'S CLEAR THAT A CODE-COMPLIANT PARKING AREA COULD BE INSTALLED WHILE ALSO BRING THE EXISTING NON-CONFORMING PAVED PARKING AREA INTO CODE COMPLIANCE, TOO.**

**WITH THAT SAID, IF THE PLAN COMMISSION (AND ULTIMATELY THE VILLAGE BOARD) WANT TO APPROVE THE CUP AMENDMENT PROPOSAL IN A MANNER THAT WOULD ENABLE THE OWNER/OPERATOR TO KEEP THE EXISTING NON-CONFORMING PAVED PARKING AREA "AS IS" (WITH 15 STALLS) AND ALLOW THE CONSTRUCTION OF AN ADDITIONAL PARKING AREA UNDER THE OWNER/OPERATOR'S PREFERRED OPTION 1 (WITH 12-14 ADDITIONAL STALLS), THEN A MOTION WOULD BE TO APPROVE STAFF'S RECOMMENDATION BUT DELETE CONDITIONS #4.b. AND 4.c.**

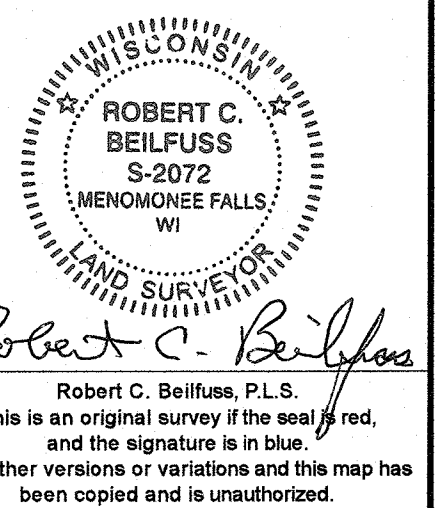
**IF THAT IS THE ACTION TAKEN, STAFF REQUESTS THAT, AT A MINIMUM, THE FOLLOWING NEW CONDITIONS BE INCLUDED:**

10. Option 1 (Sheet 2 dated 2/20/2024) is approved provided that the 56'x72' parking area and 16' wide connecting driveway be paved with asphalt or concrete.
11. A minimum 10' wide permanent vegetated buffer designed to filter storm water run-off from the existing and new parking areas and connecting driveway be installed along the east and north edge as part of restoring the site.



Point Land Surveying & Mapping

W174 N9467 Joper Road  
Menomonee Falls  
Wisconsin 53051  
262-250-8003 office  
email  
pointlandsurvey@wi.rr.com  
Robert C. Beilfuss, P.L.S.  
Professional Land Surveyor



EXISTING BASE MAP  
W201 N10466 Appleton Ave.  
GERMANTOWN, WISCONSIN  
Das Barrel Room  
© POINT LAND SURVEYING AND MAPPING 2023

| LEGEND |                                                   |
|--------|---------------------------------------------------|
|        | BOUNDARY LINE                                     |
|        | SECTION LINE                                      |
|        | EASEMENT LINE                                     |
|        | DNR WETLAND VIEWER LINE                           |
|        | 75' SETBACK LINE                                  |
|        | STREAM                                            |
|        | SILT FENCE                                        |
|        | FORCE MAIN                                        |
|        | SANITARY SEWER                                    |
|        | STORM SEWER                                       |
|        | WATER                                             |
|        | ELECTRIC                                          |
|        | TELEPHONE                                         |
|        | GAS                                               |
|        | ATT                                               |
|        | BURIED ELECTRIC SERVICE (BES)                     |
|        | 1" X 24" IRON PIPE                                |
|        | LIGHT                                             |
|        | MANHOLE                                           |
|        | CATCH BASIN SQUARE                                |
|        | CATCH BASIN ROUND                                 |
|        | SIGN                                              |
|        | POWER POLE                                        |
|        | TRANSFORMER                                       |
|        | TRAFFIC LIGHT                                     |
|        | SIGNAL BOX                                        |
|        | TELEPHONE PEDESTAL                                |
|        | CONCRETE POST                                     |
|        | GAS VALVE                                         |
|        | GUY WIRE                                          |
|        | ELECTRIC PEDESTAL                                 |
|        | WATER VALVE                                       |
|        | HYDRANT                                           |
|        | TELEPHONE POLE                                    |
|        | DECIDUOUS TREE                                    |
|        | CONIFEROUS TREE                                   |
|        | SHRUB                                             |
|        | CAUTION SIGN FOR COMBUSTIBLE UNDERGROUND GAS LINE |

NOTES

- BOUNDARY LINES SHOWN ARE BASED ON BOUNDARY SURVEY PREPARED BY WILLIAM R HENRICH, PROFESSIONAL LAND SURVEYOR, S-2419 ON NOVEMBER 3, 2006.  
NO BOUNDARY RETRACEMENT OR ESTABLISHMENT WAS INCLUDED AS PART OF THIS PROJECT.
- WETLAND LINES BASED ON THE CURRENT DNR SURFACE WATER DATA VIEWER

"THE INFORMATION SHOWN ON THIS DRAWING CONCERNING TYPE AND LOCATION OF UNDERGROUND UTILITIES IS NOT GUARANTEED TO BE ACCURATE OR ALL INCLUSIVE. THE CONTRACTOR IS RESPONSIBLE FOR MAKING HIS OWN DETERMINATIONS AS TO THE TYPE AND LOCATION OF UNDERGROUND UTILITIES AS MAY BE NECESSARY TO AVOID DAMAGE THERETO."

|                |            |
|----------------|------------|
| PROJECT NUMBER | 2023-06    |
| MAPPING SCALE  | 1" = 20'   |
| SURVEY BY      | RCB        |
| DRAWN BY       | RCB        |
| APPROVED BY    | RCB        |
| DATE OF SURVEY | 12/21/2023 |
| PLOT DATE      | 1/1/2024   |
| FIELD BOOK     | 7          |
| PAGE           | 59         |
| CADD FILE      |            |
| REVISIONS      |            |
| SHEET NUMBER   | 1          |

**LEGEND**

|                         |                                                   |
|-------------------------|---------------------------------------------------|
| BOUNDARY LINE           | 1" X 24" IRON PIPE                                |
| PROPOSED EDGE OF GRAVEL | LIGHT                                             |
| RIGHT OF WAY LINE       | MANHOLE                                           |
| SECTION LINE            | CATCH BASIN SQUARE                                |
| SETBACK LINE-DOT        | CATCH BASIN ROUND                                 |
| EASEMENT LINE           | SIGN                                              |
| SF-SF-SF                | POWER POLE                                        |
| FM-FM                   | TRANSFORMER                                       |
| SS                      | TRAFFIC LIGHT                                     |
| ST                      | SIGNAL BOX                                        |
| W-W                     | TELEPHONE PEDESTAL                                |
| E-E                     | CONCRETE POST                                     |
| T                       | GAS VALVE                                         |
| G-G                     | GUY WIRE                                          |
| ATT-ATT                 | ELECTRIC PEDESTAL                                 |
| BES-BES                 | WATER VALVE                                       |
| DNR WETLAND LINE        | HYDRANT                                           |
|                         | TELEPHONE POLE                                    |
|                         | DECIDUOUS TREE                                    |
|                         | CONIFEROUS TREE                                   |
|                         | SHRUB                                             |
|                         | CAUTION SIGN FOR COMBUSTIBLE UNDERGROUND GAS LINE |

**GENERAL NOTES:**

DETAILS OF CONSTRUCTION NOT SHOWN ON THIS DRAWING SHALL CONFORM TO THE PERTINENT REQUIREMENTS OF THE STANDARD SPECIFICATIONS AND APPLICABLE SPECIAL PROVISIONS.

WHEN POSSIBLE THE SILT FENCE SHOULD BE CONSTRUCTED IN AN ARC OR HORSESHOE SHAPE, WITH THE ENDS POINTING UPSLOPE TO MAXIMIZE BOTH STRENGTH AND EFFECTIVENESS.

1. CROSS BRACE WITH 2" X 4" WOODEN FRAME OR EQUIVALENT AT TOP OF POSTS AS DIRECTED BY THE ENGINEER.

2. MINIMUM 14 GAGE WIRE REQUIRED, FOLD FABRIC 3" OVER THE WIRE AND STAPLE OR PLACE WIRE RINGS ON 12" C-C.

3. EXCAVATE A TRENCH A MINIMUM OF 4" WIDE AND 6" DEEP TO BURY AND ANCHOR THE GEOTEXTILE FABRIC, FOLD MATERIAL TO FIT TRENCH AND BACKFILL AND COMPACT TRENCH WITH EXCAVATED SOIL.

4. WIRE SUPPORT FENCE SHALL BE 14 GAGE MINIMUM WOVEN WIRE WITH A MAXIMUM MESH SPACING OF 6". SECURE TOP OF GEOTEXTILE FABRIC TO TOP OF FENCE WITH STAPLES OR WIRE RINGS AT 12" C-C.

5. GEOTEXTILE FABRIC SHALL BE REINFORCED WITH AN INDUSTRIAL POLY-PROPYLENE NETTING WITH A MAXIMUM MESH SPACING OF 3/4" OR EQUAL. A HEAVY DUTY NYLON TOP SUPPORT CORD OR EQUIVALENT IS REQUIRED.

6. STEEL POSTS SHALL BE SLOTTED "T" OR "U" TYPE WITH A MINIMUM WEIGHT OF 1.28 lbs./lin. ft. (WITHOUT ANCHOR). PIN ANCHORS SUFFICIENT TO RESIST POST MOVEMENT ARE REQUIRED. WOOD POSTS SHALL BE A MINIMUM SIZE OF 4" DIA. OR 1-1/2" X 3-1/2" EXCEPT WOOD POSTS FOR GEOTEXTILE FABRIC REINFORCED WITH NETTING SHALL BE A MINIMUM SIZE OF 1-1/8" X 1-1/8" OAK OR HICKORY.

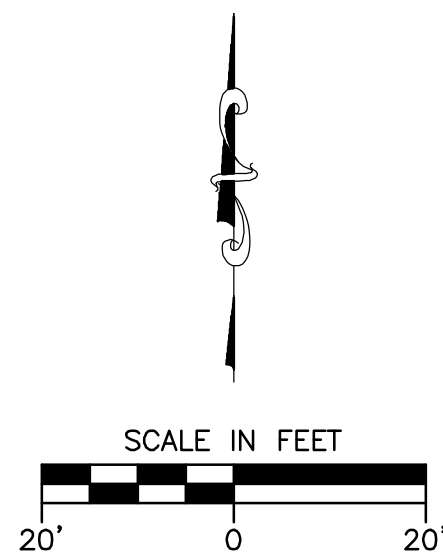
ALTERNATIVES A AND B ARE EQUAL AND EITHER MAY BE USED.

**NOTES**

1. BOUNDARY LINES SHOWN ARE BASED ON BOUNDARY SURVEY PREPARED BY WILLIAM R. HENRICHS, PROFESSIONAL LAND SURVEYOR, S-2419 ON NOVEMBER 3, 2006.

2. WETLAND LINES BASED ON THE CURRENT DNR SURFACE WATER DATA VIEWER.

**PRELIMINARY-REVIEW ONLY**



Know what's below.  
Call before you dig.

**Point Land Surveying  
& Mapping**  
W174 N9467 Joper Road  
Menomonee Falls  
Wisconsin 53051  
262-250-8003 office email  
pointlandsurvey@wi.rr.com  
Robert C. Beilfuss, P.L.S.  
Professional Land Surveyor

Robert C. Beilfuss, P.L.S.  
This is an original survey if the seal is red,  
and the signature is in blue.  
Any other versions or variations and this map has  
been copied and is unauthorized.

**OPTION 2-CODE COMPLIANT W/PAVEMENT**  
**W201 N10466 APPLETON AVE.**  
**GERMANTOWN, WISCONSIN**  
**DAS BARREL ROOM**  
© POINT LAND SURVEYING AND MAPPING 2023

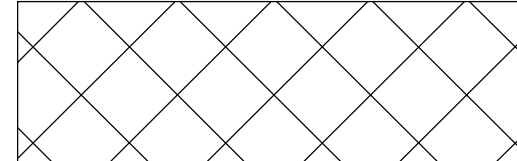
|                |            |
|----------------|------------|
| PROJECT NUMBER | 2023-06    |
| MAPPING SCALE  | 1" = 20'   |
| SURVEY BY      | RCB        |
| DRAWN BY       | RCB        |
| APPROVED BY    | DJN        |
| DATE OF SURVEY | 12/21/23   |
| PLOT DATE      | 01/27/2024 |
| FIELD BOOK     | 7          |
| PAGE           | 59         |
| CADD FILE      |            |
| REVISIONS      |            |
| SHEET NUMBER   | 3          |



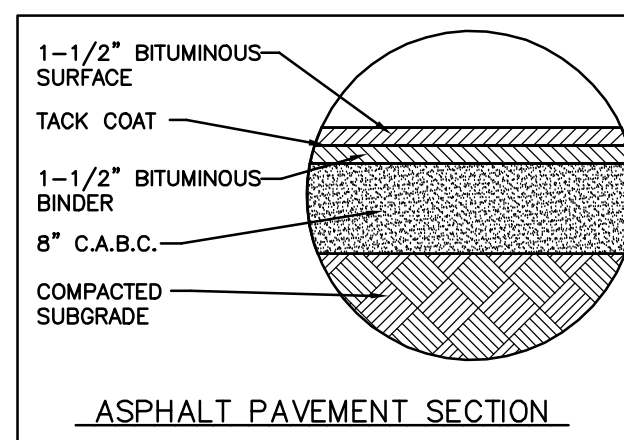
LEGEND

- |                  |                               |
|------------------|-------------------------------|
| —                | BOUNDARY LINE                 |
| - - -            | SECTION LINE                  |
| - - - - -        | EASEMENT LINE                 |
| - SF - SF - SF - | SILT FENCE                    |
| - FM - FM -      | FORCE MAIN                    |
| - SS -           | SANITARY SEWER                |
| - ST -           | STORM SEWER                   |
| - W - W -        | WATER                         |
| - E - E -        | ELECTRIC                      |
| - T -            | TELEPHONE                     |
| - G - G -        | GAS                           |
| - ATT - ATT -    | AT&T                          |
| - BES - BES -    | BURIED ELECTRIC SERVICE (BES) |
| ○                | 1" X 24" IRON PIPE            |
| ⊗                | LIGHT                         |
| ⊕                | MANHOLE                       |
| ⊞                | CATCH BASIN SQUARE            |
| ⊕                | CATCH BASIN ROUND             |
| ⊞                | SIGN                          |
| ⊞                | POWER POLE                    |
| ⊞                | TRANSFORMER                   |
| ⊞                | TRAFFIC LIGHT                 |
| ⊞                | SIGNAL BOX                    |
| ⊞                | TELEPHONE PEDESTAL            |
| ⊞                | CONCRETE POST                 |
| ⊞                | GAS VALVE                     |
| ⊞                | GUY WIRE                      |
| ⊞                | ELECTRIC PEDESTAL             |
| ⊞                | WATER VALVE                   |
| ⊞                | HYDRANT                       |
| ⊞                | TELEPHONE POLE                |
| ⊞                | DECIDUOUS TREE                |
| ⊞                | CONIFEROUS TREE               |
| ⊞                | SHRUB                         |

- \* INDICATES TYPE  
C - COMMUNICATIONS  
E - ELECTRIC  
G - GAS  
M - METER  
S - SANITARY  
ST - STORM  
T - TELEPHONE  
U - UNKNOWN  
W - WATER



EXISTING CRUSHED GRAVEL AND ASPHALT  
AREAS TO BE REMOVED AND RESTORED WITH  
TOPSOIL, SEED AND MAT BY OTHERS  
NET IMPERVIOUS AREA=4993 SQ. FT.



"THE INFORMATION SHOWN ON THIS DRAWING  
CONCERNING TYPE AND LOCATION OF UNDER-  
GROUND UTILITIES IS NOT GUARANTEED TO BE  
ACCURATE OR ALL INCLUSIVE. THE CONTRACTOR IS  
RESPONSIBLE FOR MAKING HIS OWN DETERMINA-  
TIONS AS TO THE TYPE AND LOCATION OF UNDER-  
GROUND UTILITIES AS MAY BE NECESSARY TO  
AVOID DAMAGE THERETO."

PRELIMINARY-REVIEW ONLY

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

### 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](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 Dumann, 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](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:

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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.
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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



Village of



Germantown

...Willkommen

Fee must accompany application

730  
\$1480

Paid

Date

8/4/23

## CONDITIONAL USE PERMIT APPLICATION

Pursuant to Section 17.42 of the Municipal Code

Please read and complete this application carefully. All applications must be signed and dated.

### 1 APPLICANT OR AGENT

Mark Brooks

Phone (414) 507-8653

Fax ( )

E-Mail dasbarrelroom@gmail.com

### PROPERTY OWNER

Julie Kind

Phone (414) 303-9094

### 2 TO WHOM SHOULD THE PERMIT BE ISSUED?

|  |
|--|
|  |
|--|

### 3 PROPERTY ADDRESS

### TAX KEY NUMBER

W201N10466 Appleton Ave

### 4 DESCRIPTION OF EXISTING OPERATION

Briefly describe the use as it exists today, including use, size, number of employees, hours of operation, etc. If this permit involves new construction, describe the current status of the property, e.g. "vacant." Use additional pages as necessary.

### 5 DESCRIPTION OF PROPOSED OPERATION

Write the name of the proposed conditional use exactly as it appears in the Municipal Code

Describe the proposed use, including size, number of employees, hours of operation and extent of any new construction/alterations.

I am applying to amend the current CUP #13-19 to allow expansion of the existing off-site parking area. I am also asking that I not be required to pave the new area but to allow the use of gravel.

6 **METES AND BOUNDS LEGAL DESCRIPTION OF PROPERTY – REQUIRED**

Attach pages as necessary

7 **SUPPORTING DOCUMENTATION:**

- ☐ Site Plan and elevations for new construction (can be conceptual)
- ☐ Photos of existing use and/or proposed use operating elsewhere
- ☐ \_\_\_\_\_
- ☐ \_\_\_\_\_

8 **READ AND INITIAL THE FOLLOWING:**

MB I understand that the Village is under no obligation to issue a Conditional Use Permit and will do so only if the applicant successfully demonstrates that the proposed use is harmonious with the neighborhood and the long range goals of the Village.

MB I will notify the Village if any aspects of the conditional use changes. I understand that failure to do so may result in the revocation of the CUP.

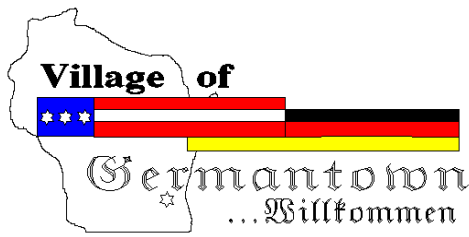
MB I understand that a Conditional Use Permit is valid only if the conditions and restrictions of the permit are met. I understand that failure to comply with any aspect of the permit may result in revocation.

MB I understand that Village Staff is required to post one or more signs along the street frontage of and/or on the property subject of this application that indicate to nearby property owners and the general public that a public hearing of my application will be held before the Village Plan Commission and/or Village Board prior to action being taken on this application; I hereby grant Village Staff permission to enter onto the property for the expressed purpose of installing said sign(s) provided Village Staff is responsible for installing, maintaining and removing said signs in a reasonable manner and timeframe.

9 **SIGNATURES – ALL APPLICATIONS MUST BE SIGNED BY OWNER!**

Mark A. Brooks 8/2/23  
Applicant Date

[Signature] P.R. 8-3-23  
Owner Date



## Engineering Department Memorandum

**To :** Jeffrey W. Retzlaff, AICP, Planning Director/Zoning Administrator  
**From :** Brad Seubert P.E. Harwood Engineering Consultants  
**Date :** August 29, 2023  
**Re :** Das Barrell Room

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### **Items Reviewed:**

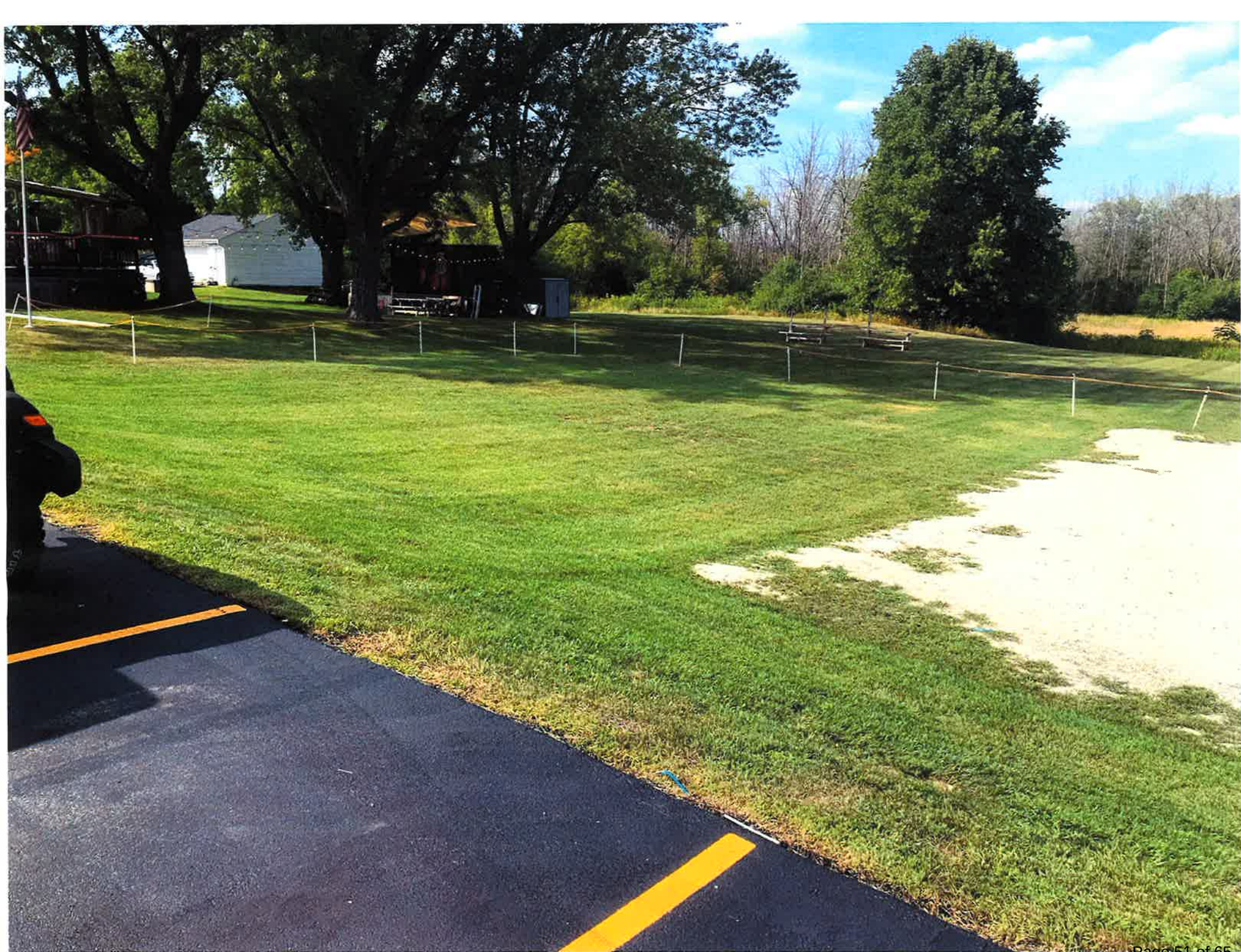
1. CUP Application Dated: 08-02-23

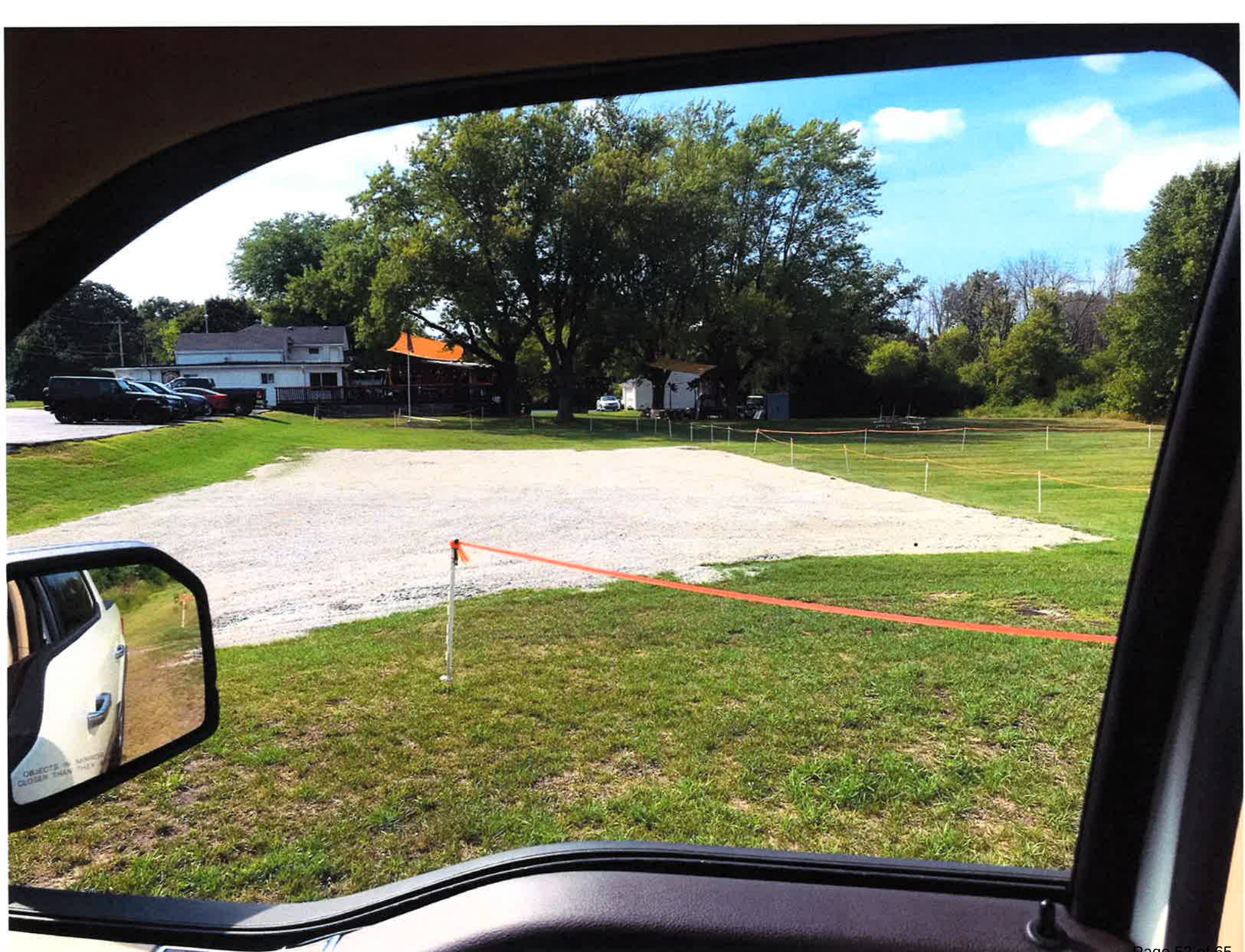
### **General Comments:**

1. The CUP application has been reviewed. The following items are required to be submitted for Site Plan Review prior to permits being issued.
  - a. Existing site survey stamped by a registered land surveyor.
  - b. Site, Grading and erosion control plans prepared by a registered engineer.
  - c. If over 5,000 square feet of impervious surface (gravel counts as impervious) is added a green infrastructure plan meeting the requirements of MMSD chapter 13 is required.









PARCEL 2  
293983

PARCEL 1  
#293982

148.50'

288.75' N 25°38'00"E 320.10'

52'

109'

526°22'00W  
417.30'

Asphalt  
Parking

BLDG

Asphalt  
Parking

sign

6.00' RAIL

148.50

276.05'

N 63°38'00W

ROADWAY

ROAD CENTER LINE

SO. LINE S.W. 1/4 S  
S.T.H. 174

Endorsement stamp digitally applied  
Please keep attached to original document

**CUP #13 - 19**

Document No.

**CONDITIONAL USE PERMIT**

Document Title

VILLAGE OF GERMANTOWN, WASHINGTON COUNTY, WISCONSIN  
CONDITIONAL USE ZONING PERMIT

Whereas the Applicants:

**Mark Brooks, Das Barrel Room Operator and Agent for  
Renee Martin and Doctors LLC, Property Owner**

agrees to comply with applicable Codes and Ordinances of the Village of Germantown, Wisconsin, and further agrees that all work done pursuant to the permission granted herewith will conform with the applications and drawings filed with and approvals granted by officials of the Village for the purpose of obtaining this permit.

Now, therefore, this permit is issued to the Property Owner for the use of an "off-site" parking area pursuant to Section 17.45(5) of the Village's Zoning Code.

Document # **1481369**  
WASHINGTON COUNTY WISCONSIN  
2019-10-03 12:36:00 PM

*Sharon A. Martin*

SHARON A MARTIN  
WASHINGTON COUNTY  
REGISTER OF DEEDS  
Fee: **\$30.00**

Return via **MAIL (REGULAR)**  
Pages: **5**

Name & Return Address:

**Village of Germantown  
P.O. Box 337  
Germantown, WI 53022**

Parcel Identification No:

**GTNV 293-982 & 293-983**

**On the following described property located in the Village of Germantown,  
Washington County, Wisconsin:**

**GTNV 293-982 (W201 N10466 Appleton Avenue)**

That part of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section Twenty-nine (29), Township Nine (9) North of Range Twenty (20) East. Village of Germantown. Washington County, Wisconsin, described as follows:

Commencing at a point 7.82 chains Northwest of the intersection of the center line of said Fond du Lac Road with the South line of Section 29, said point being the Southwest corner of a parcel of land conveyed by Joshua Gifford and wife to Thomas Nelson and recorded in Volume D of Deeds on page 574; thence North 26 degrees East along the Westerly line of said Nelson tract 17.50 rods; thence North 64 degrees West, 9 rods; thence South 26 degrees West, 17.63 rods to center of Fond du Lac Road; thence South 54 degrees East, 9 rods to the place of beginning.

**GTNV 293-983 (Undeveloped Parcel w/ Off-Site Park Area)**

That part the Southwest Quarter of the Southwest Quarter (SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ) of Section Twenty-nine (29). Township Nine (9) North of Range Twenty (20) East, Village of Germantown, Washington County. Wisconsin, described as follows, viz:

Commencing at Southwest corner of said Section 29; thence East, 1164.51 feet; hence North 63 degrees 38 minutes West along the centerline of State Trunk Highway No. 175, 195.30 feet to the place of beginning of this description; thence 63 degrees 38 minutes West along said centerline, 276.05 feet; thence North 25 degrees 38 minutes East, 320.10 feet; thence 82 degrees 50 minutes East, 296.20 feet thence South 26 degrees 22 minutes West, 417.30 feet to the place of beginning of this description.

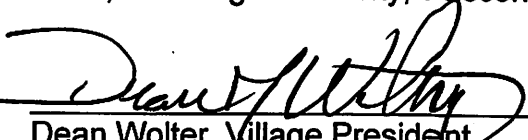
**Pursuant to the following condition(s):**

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, striping. 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 may be allowed subject to an amendment to this conditional use permit, and, will require 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.
4. 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 over-night storage (other than snow storage) of any materials or equipment and shall be kept clean and continuously maintained.
5. In the event that the 2.1-acre undeveloped parcel is developed, the existing paved parking area may be required to be removed or modified to comply with all current Zoning Code requirements in effect at that time. 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.
6. Any signage displayed on the off-site parking area shall be reviewed and approved by the Village subject to applicable sign regulations.
7. 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.
8. 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.

CUP # 13-19

Mark Brooks, Das Barrel Room Operator, Renee Martin & Doctors LLC, Property Owner  
Village of Germantown, Washington County, Wisconsin  
Page 3 of 5

Granted by the Village Board of the Village of Germantown, Washington County, Wisconsin  
on the 16 day of September, 2019.

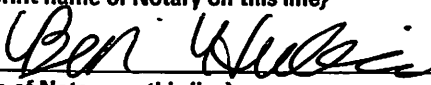
  
\_\_\_\_\_  
Dean Wolter, Village President

ATTEST:

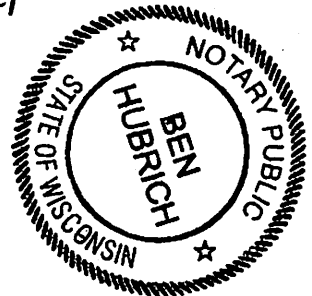
  
\_\_\_\_\_  
Deanna B. Braunschweig, WCMC/CMC, Village Clerk

STATE OF WISCONSIN ) SS  
WASHINGTON COUNTY)

Personally came before me this 16<sup>th</sup> day of September, 2019, the above  
named Dean Wolter, Village President, and Deanna B. Braunschweig, Village Clerk, to me  
known to be the persons who executed the foregoing instrument and acknowledged the same.

Ben Hubrich  
\_\_\_\_\_  
{type or print name of Notary on this line}  
  
\_\_\_\_\_  
{signature of Notary on this line}

Notary Public, State of Wisconsin  
My Commission Expires: 5/25/2021



CUP # 13-19

Mark Brooks, Das Barrel Room Operator, Renee Martin & Doctors LLC, Property Owner  
Village of Germantown, Washington County, Wisconsin  
Page 4 of 5

**ACCEPTANCE OF TERMS AND CONDITIONS BY OPERATOR**

As business operator and agent for the property owner I hereby accept the terms and conditions set forth herein and realize that non-adherence to the terms and conditions as stated herein may result in the revocation of this Permit by the Village of Germantown.

Dated this 24 day of September, 2019

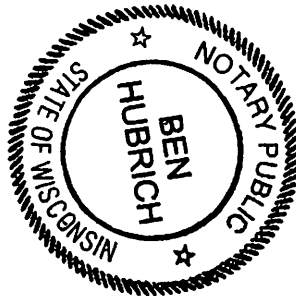
Mark A. Brooks  
Mark Brooks, Operator and Agent for Property Owner

STATE OF WISCONSIN) SS

Washington COUNTY)

Personally came before me this 24 day of September, 2019, being the above named Mark Brooks, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Ben Hubrich  
{type or print name of Notary on this line}  
Ben Hubrich  
{signature of Notary on this line}  
Notary Public, State of Wisconsin  
My Commission Expires: 5/25/2021



CUP # 13-19

Mark Brooks, Das Barrel Room Operator, Renee Martin & Doctors LLC, Property Owner  
Village of Germantown, Washington County, Wisconsin  
Page 5 of 5

**ACCEPTANCE OF TERMS AND CONDITIONS BY PROPERTY OWNER**

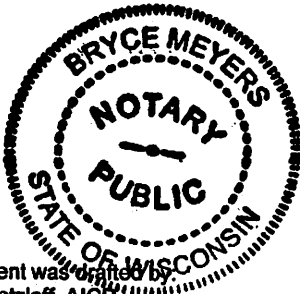
As property owner, I hereby accept the terms and conditions set forth herein and realize that non-adherence to the terms and conditions as stated herein may result in the revocation of this Permit by the Village of Germantown.

Dated this 30 day of September, 2019

Renee Martin SOLE MEMBER  
Doctors LLC  
Renee Martin, Doctors LLC, Property Owner

STATE OF WISCONSIN) SS  
Washington COUNTY)

Personally came before me this 30 day of September, 2019, being the above named Renee Martin, to me known to be the person who executed the foregoing instrument and acknowledged the same.



Bryce Meyers  
(type or print name of Notary on this line)  
[Signature]  
(signature of Notary on this line)  
Notary Public, State of Wisconsin  
My Commission Expires: 1/14/23

This instrument was drafted by:  
Jeffrey W. Retzlaff, AICP  
Community Development Director/Village Planner/Zoning Administrator  
Village of Germantown, Wisconsin



Village of  
Germantown  
Willkommen

ZONING COMPLIANCE/  
OCCUPANCY PERMIT

Date of Application: 5-31-19  
\$175 Application Fee Received By: [Signature]

Please read and print legibly. List name of actual contact person (NOT just business name).

APPLICANT OR AGENT:

Name: Mark Brooks  
Address: 152 W 14018 Aberdeen Dr. Men Falls  
Phone: 414-507-8653  
Fax: \_\_\_\_\_  
E-Mail: markb@burtonmayer.com

PROPERTY or Business OWNER:

Name: RENÉE MARTIN - ~~RE~~ Member Doctors LLC  
Address: W 206 N 10515 Appleton Ave  
Phone: Germantown, WI 53022  
Fax: 262-253-8133  
E-Mail: Rmartin48@a.wi.rr.com

PROPERTY ADDRESS OR Tax Parcel ID#:

W201 N 10466 Appleton Ave, Germantown, WI

**DESCRIPTION OF PROPOSED USE** (Describe improvements, structures, uses and activities conducted, services provided, products made or sold, # of employees, hours of operation, etc. that will enable Zoning Administrator to determine if the proposed use or operation complies with the applicable zoning district and/or other use restrictions that may apply to the subject property. Use back side or additional sheets as needed):

Restaurant/Bar serving upscale food & beverages in a newly remodeled & decorated space. outdoor deck & greenspace to provide an area for outdoor dining & yard games such as Baggies, Horseshoes, Bocce Ball etc. Approx 11 employees & hours of 11:00 am - close & future breakfast hours. (over)

READ AND INITIAL THE FOLLOWING:

- ☒ I understand that Village Staff may request additional information to properly evaluate this request and failure to provide such information may in itself be sufficient cause to deny the petition.
- ☒ I understand that Village Staff can impose conditions or other requirements necessary in order to meet and/or remain in compliance with the Village's Zoning Codes and/or other Village requirements that may apply to the subject property.

INCLUDE THE FOLLOWING WITH YOUR APPLICATION:

- ☐ A scaled site plan showing location of proposed use on the property (not required if within building).
- ☐ \$175 Application Fee
- ☐ Other Information required by Zoning Administrator

SIGNATURES: ALL APPLICATIONS MUST BE SIGNED

Mark A. Brooks 5-30-19  
Applicant Date  
[Signature] Doctors LLC 5-30-19  
Property Owner Date

**APPROVED**  
VILLAGE USE ONLY

|                                                        |                                                   |
|--------------------------------------------------------|---------------------------------------------------|
| <input checked="" type="checkbox"/> Building/Arch Plan | <input type="checkbox"/> Site Plan                |
| <input checked="" type="checkbox"/> Landscaping Plan   | <input type="checkbox"/> Sign Plan                |
| <input checked="" type="checkbox"/> Lighting Plan      | <input checked="" type="checkbox"/> Zoning Permit |

[Signature]  
Zoning Administrator  
Date Approved: 6-14-19

Approval Conditions apply as noted below:  
SPE LETTER DATED  
6-14-19 FOR CONDITIONS  
OF APPROVAL

-----  
VILLAGE OF GERMANTOWN

\*\*\* CUSTOMER RECEIPT \*\*\*

DATE: 05/31/19 TIME: 09:31:28

DESCRIPTION PAY CD AMOUNT

-----  
ZONING FEES 2 175.00

DAS BARREL ROOM LLC 1001

TOTAL AMOUNT DUE 175.00

AMOUNT TENDERED 175.00

CHANGE DUE .00

TRANS #: 1 CASHIER CODE: 006

BATCH #: C190531 REGISTER ID: 004  
-----



## Community Development Department

Jeffrey W. Retzlaff, AICP, Director

Village Planner & Zoning Administrator

N112 W17001 Mequon Road P.O. Box 337

Germantown, WI 53022-0337

Telephone: (262) 250-4735

FAX: (262) 253-8255

Website: [www.village.germantown.wi.us](http://www.village.germantown.wi.us)

E-mail: [jretzlaff@village.germantown.wi.us](mailto:jretzlaff@village.germantown.wi.us)

May 29, 2013

Craig Braidigan  
W201N10466 Appleton Ave  
Germantown, WI 53022

**COPY**

RE: The Public House (formerly "Doctor's Pub"); Building Permit (Deck Addition)

Dear Mr. Braidigan:

Notwithstanding the provisions of Section 17.43(9) and the affect on your ability to obtain a building permit with or without site plan approval from the Village, my primary concern with the property and hesitancy to issue a building permit for the deck addition without said site plan approval is the continued use of the existing and non-compliant parking lot located at the front of the building that straddles the two parcels. This same issue was of sufficient concern to the Plan Commission back in 2008 that they approved a similar deck addition proposal with a series of conditions; including one that required the property owner to "fix" the non-compliant parking lot issue by combining the two parcels.

However, based on input and advice from the Village Attorney, in an effort to avoid further delay to your proposal to construct the deck addition, and, to also address the non-compliant parking lot issue, I am prepared to approve the building permit for your deck addition (for zoning code compliance) with a condition that the non-compliant parking lot issue be resolved within the next three (3) months. This would enable you to proceed with construction of your deck, subject to meeting the necessary building code and fire safety requirements, while you and/or the property owner decide how best to resolve the parking lot issue and pursue that course of action.

The reason why the parking lot issue needs to be resolved is that, despite its existence for some time, the existing parking lot located at the front of the building straddles the common property line with the 2.85-acre parcel to the east and, as a result, does not meet the minimum 8' parking lot setback required under Section 17.45(1)(c). Moreover, the existence of this parking lot does not "qualify" as a legal nonconforming use of the property because one cannot obtain legal nonconforming status for an accessory use such as parking (see City of Lake Geneva v. Smuda, 75 Wis. 2d 532, 537, 249 N.W.2d 783, 786-87, 1977).

Therefore, because there is no legal nonconforming status associated with the parking lot, any alterations to the building require compliance with the current parking setback/buffer regulations. Fortunately, you have a number of alternatives available to you (or the property owner) to fix the non-compliant parking lot issue, including:

1. To address the setbacks requirement, you could remove the existing parking stall(s) that encroach over the common property line and create a minimum 8' setback

"buffer" from the property line to the nearest paved parking stall. This alternative should include a greenbelt between the parking lot and the property line. As this property was subject to a prior plan commission approval, this change could be approved by me as the Zoning Administrator provided that the proposed changes do not constitute a major improvement.

2. Combine the two adjoining parcels into one using a procedure used by the Washington County Real Property Lister (and typically allowed by the Village of Germantown) that requires Village staff approval and only the recording of a Quit Claim Deed (contact Brian Braithwaite, Washington County Real Property Lister, 432 E. Washington Street, West Bend, for the necessary form and procedures). This combination would result in a sufficient setback such that the parking lot regulations would be met unless changes to the parking lot are made. A subsequent rezoning application would be required given the different zoning districts on the two parcels.
3. Obtain a Conditional Use Permit from the Village pursuant to Section 17.45(5) of the Zoning Code for an "off-site parking area". As we have already discussed, this provision was adopted in order to address situations just like yours where parking for a particular business is occurring on an adjacent (or non-adjacent) property that is non-compliant with the Zoning Code, and, to allow the business the ability to expand without having to actually combine the separate parcels as in the case of the two alternatives discussed above (this alternative was not available to the owner back in 2008 having only been added to the Zoning Code in 2010). This alternative requires Plan Commission and Village Board approval of a CUP Application.
4. Submit an application for a two-lot Certified Survey Map to redivide the two parcels so that the parking area is combined with the current "bar" parcel, leaving the remainder to the adjoining parcel. This alternative is/was one of the conditions of approval required by the Plan Commission as part of approving the previous deck addition in 2008. This alternative requires Plan Commission and Village Board approval of a CSM Application.
5. File an appeal with the Board of Zoning Appeals regarding the applicable sections of the Zoning Code and my application of those code sections to your particular situation and proposal. The Board of Zoning Appeals is the body of Village government that has the authority to hear allegations and make decisions regarding potential errors made by the Zoning Administrator in the application of and determinations under the Zoning Code.

Alternatives #1 and #3 give you the most flexibility in terms of being able to continue using the existing parking area located nearest to the front entrance of the bar while also offering the property owner the most flexibility in terms of being able to use or sell for future development purposes (the reason given to us back in 2008 as to why the previous deck addition wasn't completed and the parcels combined). Alternative #1 may result in continued code compliance issues (and possible municipal citations) for the owner of the 2.85-acre parcel if that area continues to be used for parking by patrons of the bar. Alternative #4 offers the best fix for the situation now in that it addresses the concerns of all of the parties

Craig Braidigan  
W201N10466 Appleton Ave  
The Public House; Building Permit (Deck Addition)  
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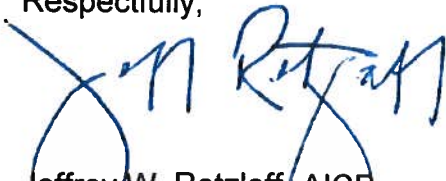
involved. Alternative #2 simply pushes Alternative #4 to a date in the future, when the CSM would be required to redivide the properties.

Please contact me to discuss what alternative course of action you and/or the property owner want to pursue and we can discuss the necessary procedures, forms, fees, etc. In the event that you want to pursue Alternative #5, i.e. filing an appeal to the Board of Zoning Appeals, please contact the Village Clerk's Office to obtain the necessary forms and discuss those procedures.

Please proceed with filing the necessary plans and supporting information along with your building permit application. I will attach a letter of approval containing the conditional approval outlined above to that permit.

In the meantime, if you have any questions or concerns regarding this matter, feel free to contact me at (262) 250-4735.

Respectfully,

A handwritten signature in blue ink, appearing to read "Jeffrey W. Retzlaff". The signature is stylized with a large loop at the end.

Jeffrey W. Retzlaff, AICP  
Village Planner & Zoning Administrator

Copies:      Village Attorney  
                 Village President  
                 Village Administrator



## Community Development Department

Jeffrey W. Retzlaff, AICP, Director

Village Planner & Zoning Administrator

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Germantown, WI 53022-0337

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E-mail: [jretzlaff@village.germantown.wi.us](mailto:jretzlaff@village.germantown.wi.us)

June 14, 2019

Mark Brooks

N52 W14018 Aberdeen Drive

Menomonee Falls, WI 53051

RE: W210 N10466 Appleton Ave; Zoning Permit for Bar/Restaurant

The zoning permit application for a new bar operation at the above cited property (formerly the Public House & Doctors Pub) has been approved subject to the conditions listed below. Subject to compliance with the conditions below, the proposed use would comply with the zoning district regulations applicable to the subject property.

### CONDITIONS OF APPROVAL:

1. Village building permits are required for ALL interior and exterior improvements and renovations (construction, electrical and/or plumbing). Contact Mike Guttman, Building Inspector, to discuss any proposed improvements, permit & inspection requirements, and state-approved plan requirements (if required). Contact Holly in Inspection Services for information about permit applications. Both can be reached at 262-250-4760.
2. Prior to occupancy or commencement of use, an occupancy inspection shall be conducted in coordination with the Village Fire Department and Inspection Services. Please contact the Fire Department and Inspection Services to arrange an inspection at 262-502-4701.
3. If required by the Fire Department or Inspection Services as part of the initial or future occupancy inspections, the owner/operator shall install and/or update necessary fire safety measures, emergency management and/or other improvements to ensure fire and building code compliance for the type of occupancy/use proposed.
4. All exterior signs, temporary and permanent, requires a sign permit. Contact Lori Johnson regarding proposed signs, and the Village's sign regulations and permit requirements at 262-250-4735.
5. The Village's Utility Code requires all commercial and industrial users discharging wastes into the sewer system to construct and maintain sampling and metering manholes in suitable and accessible positions on public property or easement to facilitate the observation, measurement and sampling of all wastes or wastewater. These manholes are required to be located, constructed and maintained in a manner approved by the Village Engineer/Wastewater Utility Superintendent. Therefore, the property owner is required to contact Tim Zimmerman, Superintendent of Wastewater Utility 262-253-7765 to coordinate an inspection of the sampling manhole, and, make any/all necessary corrections or repairs to the sampling manhole and appurtenances thereto to ensure ongoing compliance with the Village's Utility Code.

Mark Brooks  
W210 N10466 Appleton Ave; Zoning Permit for Bar/Restaurant  
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6. No parking is allowed on the adjacent property south of the building at W210 N10466 Appleton Ave (Parcel #293-983; see attached aerial photo). As discussed in a May 29, 2013 letter to the former operator (copy attached), use of the paved area southeast of the building for parking is not allowed under the Village's Zoning Code unless and until the property owner completes one of the alternatives discussed therein (e.g. combine the two parcels, obtain a conditional use permit for off-site parking, etc).

If you have any questions or concerns regarding this matter, feel free to contact me at (262) 250-4735 or Inspection Services at (262) 250-4760.

Respectfully,  
Jeffrey W. Retzlaff, AICP  
Zoning Administrator



Copy: Inspection Services  
Renee Martin, Property Owner