
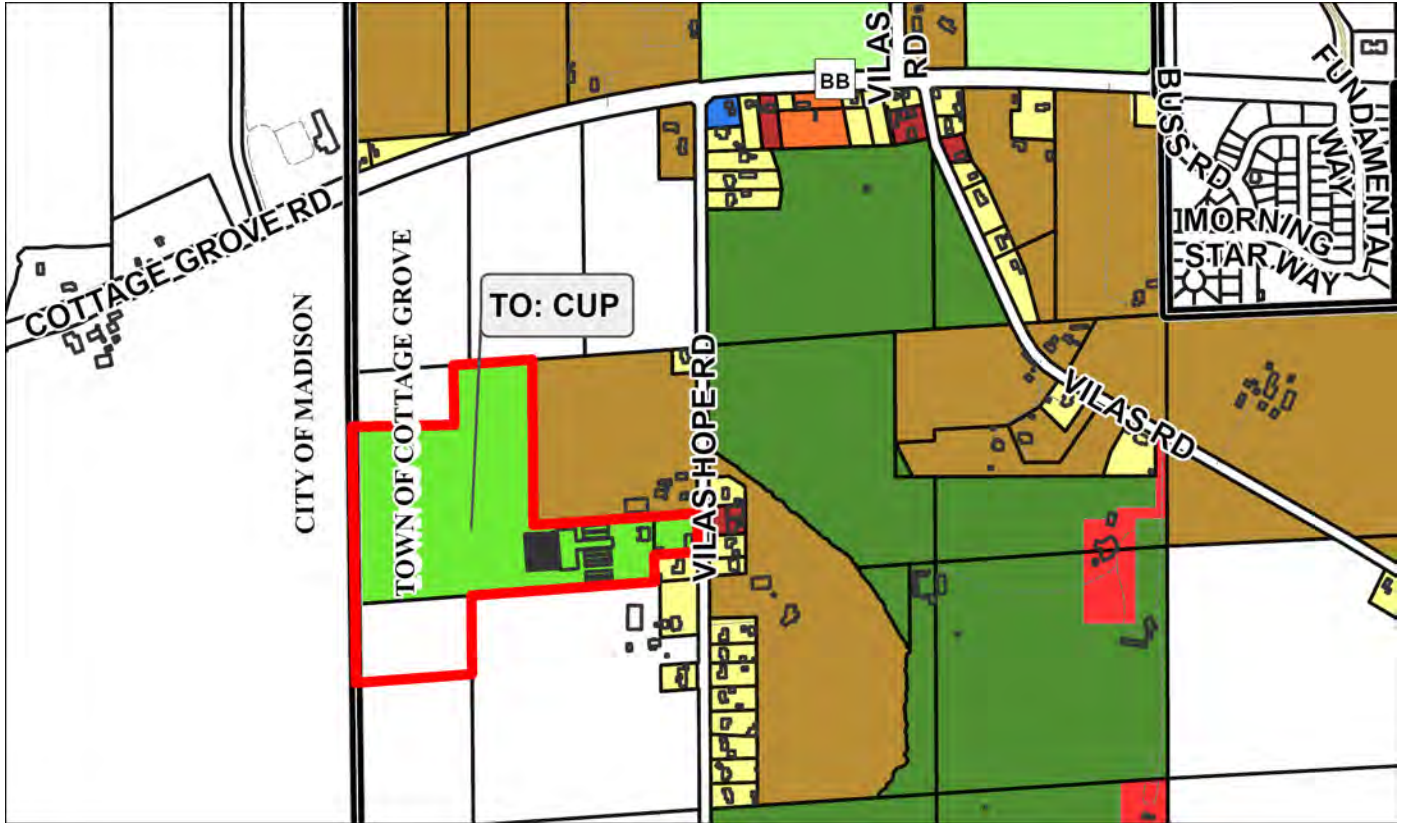


<p><b>Staff Report</b></p>  <p><b>Zoning &amp; Land Regulation Committee</b></p>	<p><u>Public Hearing:</u> <b>July 23, 2024</b></p>	<p><b>Conditional Use 02626</b></p>
	<p><u>Zoning Amendment Requested:</u>  <b>Conditional Use Permit (CUP) in the FP-B and FP-35 zoning districts</b></p>	<p><u>Town, Section:</u>  <b>COTTAGE GROVE, Section 7</b></p>
	<p><u>Size:</u> <b>40.2 Acres</b></p>	<p><u>Survey Required:</u></p>
	<p><u>Reason for the request:</u>  <b>AGRICULTURAL ENTERTAINMENT FOR EVENTS MORE THAN 10 CALENDAR DAYS PER YEAR</b></p>	<p><u>Applicant:</u>  <b>WARM BELLY NOBLE LLC (FRANCIS WISNIEWSKI)</b></p> <p><u>Address:</u>  <b>4305 &amp; 4311 VILAS HOPE RD</b></p>



**DESCRIPTION:** Applicant Francis Wisniewski Warm Belly Noble LLC requests a new Conditional Use Permit (CUP) for agricultural entertainment events for more than 10 days per year, for the existing garden and landscape center that grows strawberries, vegetables and flowers for retail sale, and which is open to the public for “pick-your-own” activities and events such as corn mazes and other seasonal gatherings. This CUP would update his existing permit with some modifications. CUP 2592 was approved in 2023 [Dane County - File #: 02592 \(legistar.com\)](https://legistar.com/View/00000000-0000-0000-0000-000000000000/02592) – this new CUP would modify the business in the following ways:

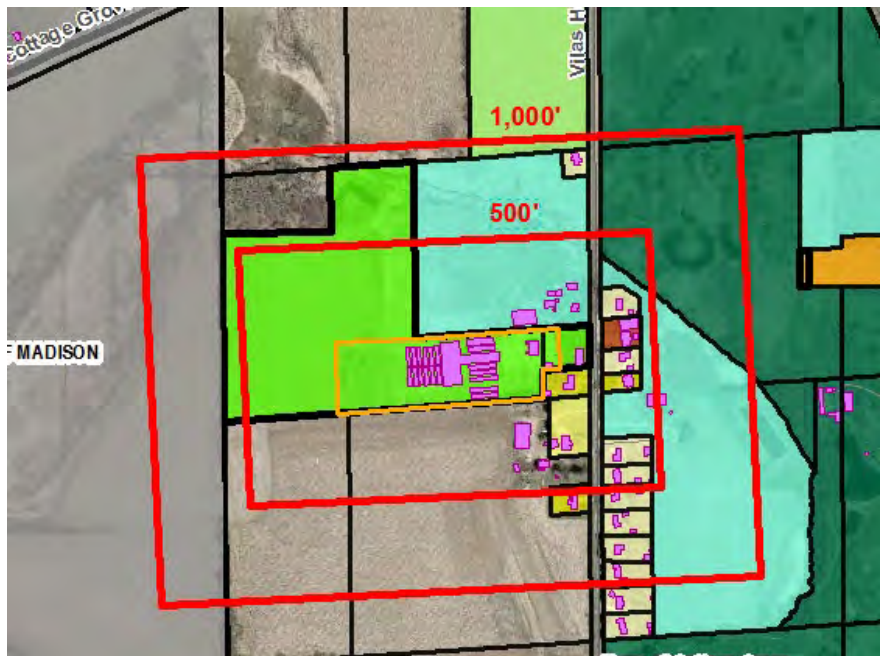
- Modifies hours of operation to be 9:00am to 7:00pm, and extended to 9:00pm during fall festivals once outdoor lighting or the farm store are completed. (Current hours are 9:00am to sunset)
- Adds amplified music, background music during festivals, and small scale live musical acts during the fall season.
- Adds a dedicated building zone for storage, a farm related building, and playground equipment.
- Adds 5 acres of adjacent farmland rented from Bruce Homburg for agricultural entertainment activities (pick your own crops / corn maze).

**OBSERVATIONS / FACTUAL INFORMATION:** The property is a 34-acre tract consisting of two parcels, plus the 5 acres to be rented, located half a mile south of the intersection of Vilas Hope Road and County Highway BB. The nearest homes to the property boundary are 80 ft to the north, 35 ft to the south, and 160 ft to the east (across Vilas Hope Road). From the front parking lot, the homes are 140 ft away to the north, 75 ft to the south, and 335 ft to the east. (See image below for approximate 500 and 1,000 ft distance buffers.) The property’s western edge is the current Town boundary with the City of Madison, and lands adjacent to the west are in agricultural use.

**RESOURCE PROTECTION:** Door Creek runs through the north end of the property, with Shoreland zoning, mapped wetlands, floodplain, and resource protection corridors in this area (roughly within 300' of the creek). No concern since this area is not proposed for buildings or improvements.

DNR mapped wetlands are present on the Homburg land being rented in the south. The applicants designated a 5-acre rented area to entirely avoid the wetlands.

**COMPREHENSIVE PLAN:** The property is [designated](#) as an agricultural preservation area in the comprehensive plan. The property is also in a designated potential expansion area for the City of Madison under an [intergovernmental agreement](#)



(IGA) between the Town of Cottage Grove and City of Madison. For the prior approved Conditional Use Permit (#2592), city staff had indicated that the proposal did not trigger city review or approval requirements under the IGA. Comprehensive plan objectives and policies generally support agricultural enterprises and agri-tourism within the agricultural preservation area. As noted, the property was previously approved under CUP 2592 for agricultural entertainment and the operation has been ongoing for the past year.

The town's comprehensive plan provides direction for the review of conditional use permits, [indicating that](#), "In their consideration of conditional use permit requests, the Plan Commission and Town Board will also evaluate the specific timing of the conditional use permit request, its relationship to the nature of both existing and future land uses, and the details of the proposed development." Given that the property is in an agricultural preservation area, and that the proposal is a modest expansion of the current use, the proposal appears reasonably consistent with comprehensive plan policies. The same or similar conditions of approval from CUP 2592 should be imposed, along with any that may be required by the town of Cottage Grove regarding the additional uses. (For questions about the comprehensive plan, please contact Senior Planner Majid Allan at (608) 267-2536 or [allan.majid@danecounty.gov](mailto:allan.majid@danecounty.gov).)

**CONDITIONAL USE PERMIT DECISION MAKING:** "Conditional uses" are those land uses which, because of unusual nature and potential for impacts on neighboring lands, public facilities, the environment or general welfare, warrant special consideration and review.

Prior to granting or denying a conditional use, the zoning committee shall make findings of fact based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets all of the standards required to obtain a conditional use permit. Below is the list of the applicable standards from Section 10.101(7)(d) of the Zoning Code, and a summary of the relevant facts including the applicant's testimony with regards to meeting the standards.

- 1. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

The CUP application describes the proposed operations plan. The applicant states that says all activities will take place in the rear of the property, within the proposed farm store, or inside greenhouses. Outdoor storage will consist of picnic tables and plants, otherwise all storage will be indoors.

Staff notes that the potential nuisances for this type of operation are most likely traffic management, noise, lighting, and manure management. The site plan provides ample space on site for vehicle parking and queuing, and has been vetted and improved in coordination with the town. The lighting plan is the same as previously approved. Noise could be a factor for the neighboring homes, unless outdoor amplified sound is limited or restricted. Applicant requests amplified music only during business hours, not to exceed 60db at 100 feet from

an amplified speaker, and no speakers placed within 200 feet of any property line. They also conducted a sound study and results show music at the desired location and levels would reduce to between 68 and 47db at the edges of the site (see Snyder & Associates "Sound Study" exhibit dated 5/31/2024). For reference, 60dBA sound levels are comparable to heavy traffic at 300 feet and 70dBA comparable to a vacuum cleaner at 10 feet away.

Applicants have a nutrient management plan to manage manure from special events involving animals. They state that the manure from petting zoo animals is to be recaptured and used as fertilizer in the growing fields. Applicant is responsible for contacting the Land and Water Resources Dept (LWRD) staff regarding the nutrient management plan, to verify any specific expectations for the storage or spreading of manure.

**2. *That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.***

The applicant states that the garden center hours would be Sunday to Saturday 9:00am to 7:00pm, with fall and winter festival hours extended until 9:00pm once the outdoor lighting or the farm store are completed. The hours should be discussed with the Town of Cottage Grove so the town can affirm or specify hours.

Lighting is proposed per the plan approved in 2023, and appears sufficient to meet the CUP standards. Not all lighting has been installed yet as it was not needed in the first year. All lighting in the back field would be limited to harvest times of year and would face westward away from the homes along Vilas Hope Road. It contains 17 lights along the north, east, and south sides of the back field to be directed downward and westward; light pole height is specified at maximum 20 feet tall. The Town of Cottage Grove also has specific standards for lighting in its ordinances, which will govern the details of the site lighting.

Noise should also be considered with regard to this standard, see comments above under standard #1.

**3. *That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.***

The applicant states that most immediate surrounding property is designated for agriculture and/or Farmland Preservation, that the conditional use adheres to the requirements of the FP-B zoning and does not impede the normal and orderly development and improvement of surrounding properties.

This standard pertains to whether the proposed conditional use would affect *how the surrounding properties could be developed and improved, considering what they are currently zoned for*. The proposed use would be similar to how the property has been used for decades, except with more variety in the type of events and the addition of amplified music during events. The surrounding lands are zoned for a mix of farmland preservation, rural residential and mixed-use, one commercial property (to the east across the road), and agricultural zoning (to the west in City of Madison). The FP-35 zoning on the land to the south restricts residential development to certain pre-existing homes, and ag entertainment is also permitted in that district.

**4. *Adequate utilities, access roads, drainage and other necessary site improvements have been/are being made.***

The utilities, access roads, drainage, and other site improvements appear adequate to serve the proposed use. Site access drives and parking lots were improved last year. The application describes the status of the stormwater management facilities which were approved and installed in 2023; modifications and additional permits are being obtained as-needed as site improvements are constructed. Toilet facilities consist of moveable trailers for visitors, and a future bathroom using the existing septic system if/when they build the new store— both options were approved as allowable with the current Conditional Use Permit.

**5. *That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.***

The parking plan is adequate for the proposed use under the zoning requirements. Off street parking is provided for the property by 452 parking stalls in two separate parking lots. The driveway was widened to 24' wide in 2023, to accommodate the two-way traffic. Owner anticipates that the business saw around 800 people at least year's fall festival, and the site could accommodate up to 1,500 people at a time.

**6. *That the conditional use shall conform to all applicable regulations of the district in which it is located.***

The proposed use conforms to the applicable regulations of the FP-B and FP-35 zoning districts. The requested use is listed as an allowable Agricultural Accessory Use in both zoning districts, with an approved CUP.

Business signage has already been approved (Zoning Permit DCPZP-2023-00469) for a ground sign that meets the signage requirements in the zoning ordinance. Any future signage would be subject to permit requirements.

**7. That the conditional use is consistent with the adopted town and county comprehensive plans.**

As noted above, the proposal appears consistent with the Town and County Comprehensive Plans. The applicant states that the use would greatly enhance the town plan's designation of an Agricultural Preservation Planning Area and the plan allows for the expansion of existing businesses at the Town Board's discretion.

**8. If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the findings described in s. 10.220(1).**

***In addition to the requirements of s. 10.101(7)(d), the zoning committee must find that the following standards are met before approving any conditional use permit in any Farmland Preservation zoning district.***

***a) The use and its location in the Farmland Preservation Zoning District are consistent with the purposes of the district.***

The FP-B district is intended for a wide range of agriculture, agricultural accessory and agriculture-related uses, at various scales. It accommodates uses that are commercial or industrial in nature; are associated with agricultural production; require a rural location due to extensive land area needs or proximity of agricultural resources; and do not require urban services. The FP-35 district is intended for a wide range of agriculture and agricultural-accessory uses at various scales, as well as incidental processing and other activities intended to add value to agricultural products produced on the premises.

***b) The use and its location in the Farmland Preservation Zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.***

Applicant states the proposed location within the Farmland Preservation Zoning district is reasonable and appropriate given the prior use of the site and existing buildings. Using the existing infrastructure and repurposing existing buildings, they are creating a thriving commercial floral and pick-your-own business.

***c) The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.***

Applicant has stated the existing crop lands will be kept as-is and reused for harvests. This new CUP would add 5 acres of additional farmland, and would designate 2 acres on the Warm Belly property for buildings and movable playground equipment.

***d) The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.***

Applicant states that the surrounding parcels are zoned similarly for agricultural use, and the proposed changes will not impact their current or future agricultural use.

***e) Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.***

Applicant states that the existing site is bordered by Door Creek and wetlands. An extensive stormwater drainage plan has already been built, and further plans of adding field tiling on the northern property (outside the wetlands) will improve on the farmland to be used for agricultural purposes. The proposed changes to the approved 2023 plan account for the necessary modifications to the preliminary stormwater design and sizing, and new permits for stormwater and erosion control are being obtained as construction progresses in phases.

**POTENTIAL NUISANCES ASSOCIATED WITH THE CONDITIONAL USE:** The potential nuisances that pertain to agricultural entertainment most commonly involve vehicle traffic, noise, lighting, and manure management. The application contains information on how those potential nuisances are handled, and these are also discussed above.

Potential conditions of approval specific to this CUP can be developed after public input and deliberation by the Zoning and Land Regulation (ZLR) Committee. Common topics include but are not limited to: hours of operation, limits on amplified sound and lighting, and site access provisions.

Under Zoning Code section 10.103(3), there are special requirements for agricultural entertainment that are intended to address the potential conflicts with the land use activity. These are not required as CUP “permit conditions” unless the Town or ZLR Committee wish to impose conditions based on these. See below for the requirements and staff comments:

***(a) For any such activities planned or anticipated to have attendance of more than 200 persons at any one time during a day, the landowner shall file an event plan, approved by the zoning administrator, addressing, at a minimum the following issues:***

- 1. the number of events proposed each year*
- 2. the maximum expected attendance at each event*
- 3. off-street parking, to meet standards in s. 10.102(8)*
- 4. days and hours of operation*
- 5. ingress and egress*
- 6. sanitation*
- 7. trash / recycling collection and disposal*
- 8. proposed signage*
- 9. other public safety issues*

***(b) Event plans must be filed with the following:***

- 1. the zoning administrator, 2. town clerk, 3. servicing fire department, 4. emergency medical service provider, 5. Dane County Sheriff's Department and 6. any local law enforcement agency.*

***(c) Event plans for such activities must be filed at least 30 days prior to the start of any activities in each calendar year.***

The draft event plan submitted provides general information on the required items above. At this time the estimated attendance is broadly estimated to be 200+ but with seasonal variation, with a maximum of 1,500 people on site during peak times and up to 4,000 visitors per day with an average stay of 3 hours.

Typically, an event plan is finalized after a CUP is approved and is added to the permit file, and distributed by County zoning staff to other agencies. It is important that the event plan designate a location for emergency service providers to go to in the event of an emergency.

**TOWN ACTION:** On July 15, 2024 the Town Board approved the CUP with updated conditions (see Recommendation section below). Conditions were relative to this application for the expanded use and are not meant to preclude the conditions on the original CUP #2592.

**STAFF RECOMMENDATION:** Staff believes that the applicant has provided sufficient evidence to address the CUP standards and mitigate the potential concerns. This includes the site and parking plan, event plan details, the approved stormwater management plan (with plan and permit updates in progress), the provision of a nutrient management plan, and the proposed limits on outdoor amplified music, as well as the town’s approval and conditions.

Pending any comments at the public hearing, Staff recommends that the ZLR Committee makes a finding of fact as to whether the proposal meets the CUP standards listed above. If the Committee requires additional information on which to base a decision, they could request specific information of the applicant or staff at the public hearing.

Potential recommended conditions of approval are listed below, which reflect [Warm Belly’s current CUP conditions](#), with some additions and modifications based on the requested changes and the town approval.

## **CUP 2626 Potential Conditions of Approval:**

### *Standard Conditions for all Conditional Use Permits from 10.101(7):*

1. Any conditions required for specific uses listed under s. 10.103 (see below).
2. The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan and phasing plan.
3. New and existing buildings proposed to house a conditional use must be constructed and maintained to meet the current requirements of the applicable sections of the Wisconsin Commercial Building Code or Uniform Dwelling Code.
4. The applicant shall apply for, receive and maintain all other legally required and applicable local, county, state and federal permits. Copies of approved permits or other evidence of compliance will be provided to the zoning administrator upon request.
5. Any ongoing business operation must obtain and continue to meet all legally required and applicable local, county, state and federal licensing requirements. Copies of approved licenses or other evidence of compliance will be provided to the zoning administrator upon request.
6. Existing onsite wastewater sewage disposal systems, if any, serving the conditional use must be inspected by a licensed plumber to determine its suitability for the proposed or expanded use. Deficient systems must be brought, at the owner's expense, into full compliance with the current requirements for new development of the state plumbing code and Chapter 46, Dane County Code.
7. All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
8. Off-street parking must be provided, consistent with s. 10.102(8).
9. If the Dane County Highway, Transportation and Public Works Department or the town engineer determine that road intersection improvements are necessary to safely accommodate the conditional use, the cost of such improvements shall be borne by the landowner. Costs borne by the landowner shall be proportional to the incremental increase in traffic associated with the proposed conditional use.
10. The Zoning Administrator or designee may enter the premises of the operation in order to inspect those premises and to ascertain compliance with these conditions or to investigate an alleged violation. Zoning staff conducting inspections or investigations will comply with any applicable workplace safety rules or standards for the site.
11. The owner or operator must keep a copy of the conditional use permit, including the list of all conditions, on the site, available for inspection to the public during business hours.
12. Failure to comply with any imposed conditions, or to pay reasonable county costs of investigation or enforcement of sustained violations, may be grounds for revocation of the conditional use permit.

### *Conditions specific to CUP # 2626:*

13. There shall be no parking on either side of Vilas Hope Road. The applicant shall be responsible for the installation of "No Parking" signs and shall coordinate with the Town Highway Superintendent to determine the signage location and details. The applicant shall be responsible for the cost of the signage.
14. A stormwater management plan shall be approved by Dane County Land and Water Resources Department. The management features shall be installed prior to the use of the rear parking lot.
15. The applicant shall be responsible for any driveway improvements required by the Town Highway Superintendent including but not limited to size of the culvert and the design of the driveway where it meets Vilas Hope Road.
16. The applicant shall install "No Parking" signs on the traffic lane on the north side of the buildings.
17. The exterior lighting shall conform to the operations plan, as well as Dane County and Town of Cottage Grove ordinances. All lighting must be dark sky compliant/downward facing. Any additional lighting would require an amendment to the conditional use permit.
18. Applicant shall provide adequate restroom facilities, in accordance with the Department of Health requirements.
19. Public hours of operation shall be limited to Sunday to Saturday 9:00am to 7:00pm year-round, with the option to extend to 9:00pm during fall festivals (once outdoor lighting or the farm store are completed).
20. Amplified music volume shall be limited to 60dba at 100 feet from the speakers.
21. Landscaping shall be installed per Town requirements, subject to written confirmation from Town Planner Mark Roffers.
22. The CUP area may include the additional leased 5 acres as long as an active lease is in place.
23. Design review will be required by the Town upon application for a building permit for the farm store.

Please contact Rachel Holloway at (608) 266-9084 or [holloway.rachel@danecounty.gov](mailto:holloway.rachel@danecounty.gov) if you have questions about this petition or staff report.