

Staff Report



Zoning and Land Regulation Committee

Public Hearing: **April 25, 2023**

**Conditional Use
02592**

Zoning Amendment Requested:

TO CUP: Agricultural entertainment for events more than 10 calendar days per year

Town/Section:

**COTTAGE GROVE,
Section 7**

Size: **34 Acres**

Survey Required.

Applicant

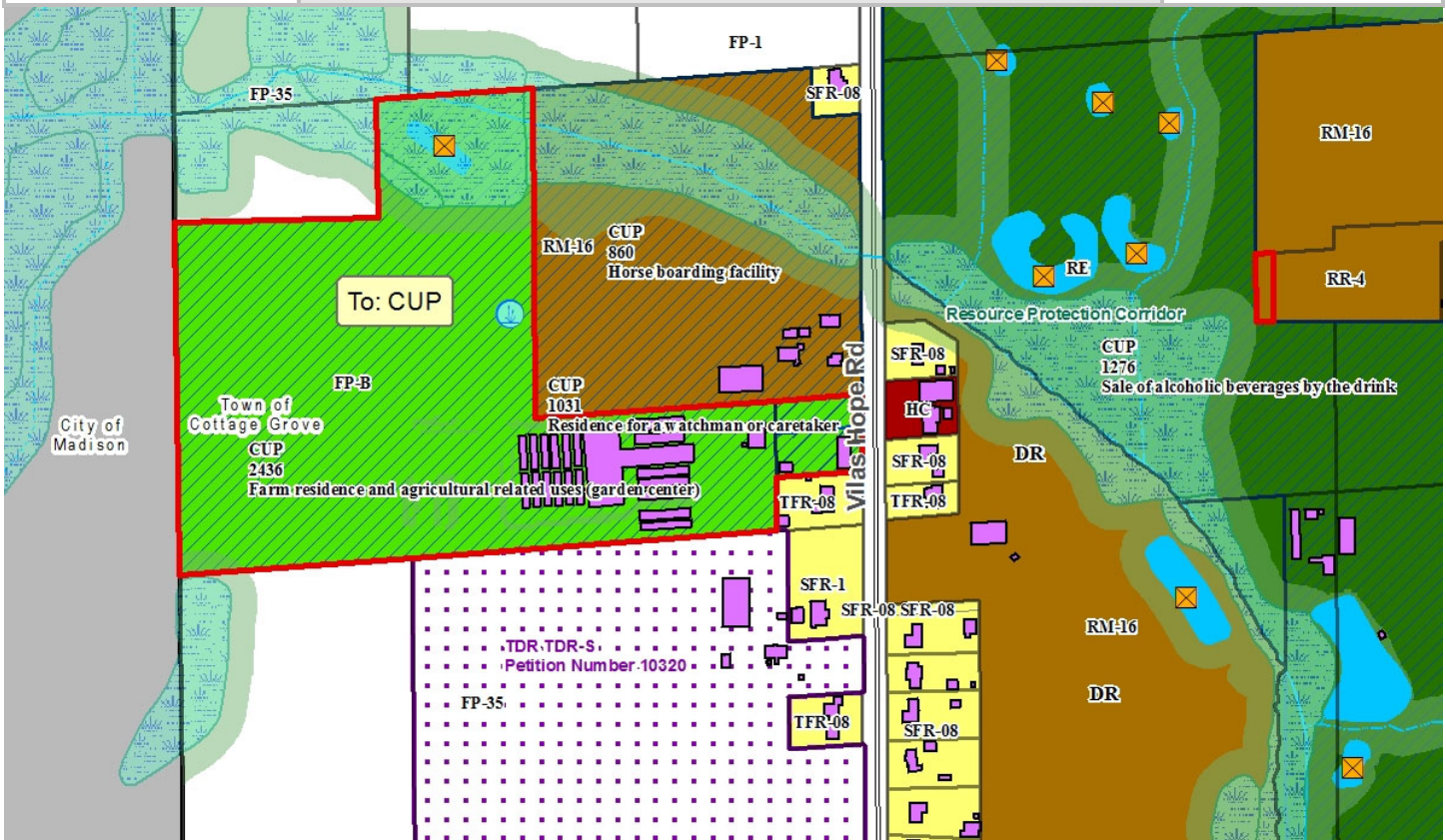
**WARM BELLY NOBLE
LLC (FRANCIS
WISNIEWSKI)**

Reason for the request:

Agricultural entertainment for events more than 10 calendar days per year

Address:

**4305 & 4311 VILAS
HOPE ROAD**



DESCRIPTION: Applicant Francis Wisniewski requests a conditional use permit for agricultural entertainment events for more than 10 days per year, as part of a proposal to open a new garden and landscape center that will grow strawberries, vegetables and flowers for retail sale, and which would also be open to the public for “pick-your-own” activities and events such as corn mazes and other seasonal gatherings. The property is the site of the former America’s Best Flowers garden center and nursery which closed in 2019.

Specific aspects of the proposal include:

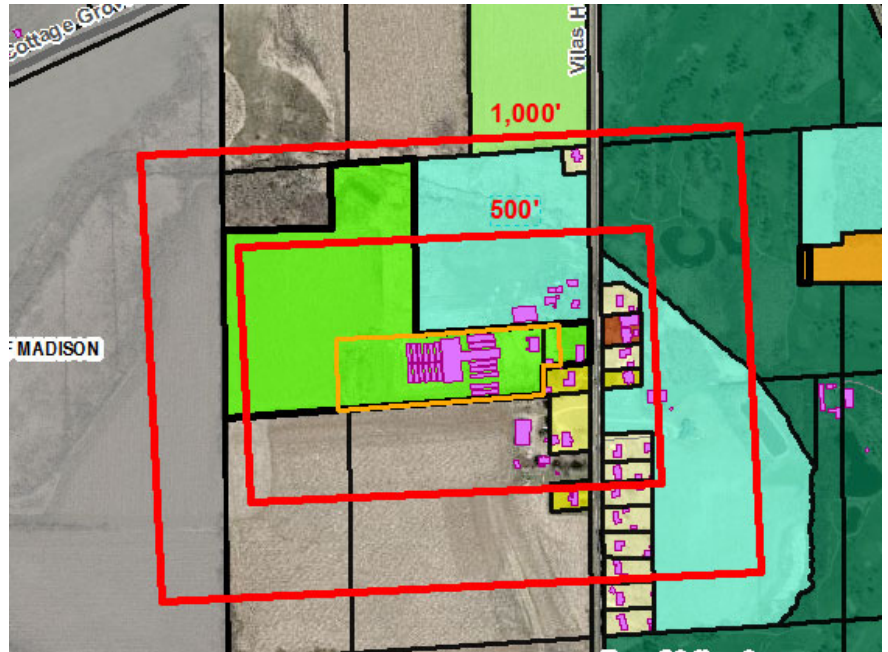
- Reuse of most of the existing buildings, except for the demolition of the front-most row of greenhouses.
- New construction: A new 2,000 SF storage building on the north side of the main building, a 6,000 SF farm store with commercial kitchen on south side of main building, and new bathroom facilities in the northwest corner behind the greenhouses (either 10 porta-potties or an actual building of the same size).
- Parking and access improvements: resurfacing and restriping the existing hard-paved front lot, widening the main driveway entrance, an expanded gravel drive around the back of the site, a new gravel parking lot in back.
- Employees: 10 full-time year round, with plans for upwards of 50 employees long-term.
- Hours of operation: Sunday-Saturday 9am to Sunset at first, with goals to expand the fall/winter hours to 9pm once the shop addition and outdoor lighting are done.

- All activities to take place in the back 30-acre farm field, or inside the greenhouse and farm store buildings.
- New outdoor lighting around the parking lots and driveways, and some in the rear farm field which would be limited during winter months.

GENERAL OBSERVATIONS / FACTUAL INFORMATION: The property is a 34-acre tract consisting of two parcels, 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 main activity area (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.

The former owners of the property, Ed and Carol Knapton, held a conditional use permit (CUP 2436) for their landscaping production and retail business and a farm/caretaker residence. The CUP was approved in 2018 but the business had been in operation for over 40 years prior to that; their CUP indicated there were up to 30 employees and the site saw 50 to 1,000 customers per day depending on the season.

Warm Belly has not provided a firm estimate on the number of attendees they anticipate, but estimate 200+ and that it would vary. As a practical matter, the number of people on site would be limited by the amount of on-site parking available, and any other limits on operating hours or events that may be set by approval of this CUP.



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

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. City staff have indicated that the proposal does 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 the site of "America's Best Flowers" garden center and nursery, which closed in December 2019.

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 substantially similar to the former use of the property, the proposed agricultural entertainment and related uses appear reasonably consistent with comprehensive plan policies. (For questions about the town plan, contact Senior Planner Majid Allan at (608) 267-2536 or allan@countyofdane.com).

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. The sections above include facts about the property and its surrounding context. Below is the list of the applicable standards from Section 10.101(7)(d) of the Zoning Code, and a summary of relevant facts including the applicant's testimony with regards to meeting the standards. Together these sections are intended to provide findings of fact that the Committee can use.

CUP Standards and Relevant Facts

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.*

Applicant states this standard will be met since all activities will take place in the rear 30 acres of farm land, in the proposed farm store building, or inside the existing greenhouse, all of which are behind any residential structures on Vilas Hope Road.

Staff notes that the potential nuisances for this type of operation are most likely traffic management, noise, lighting, and manure management. Applicants have a manure management plan for special events involving animals. The site plans submitted would improve the existing driveway off Vilas Hope Road and expand the on-site parking lots to provide ample space on site for vehicle queuing. This would improve safety for vehicles and pedestrians visiting the site during busy times.

Noise could be a factor for the neighboring homes, unless outdoor amplified sound is limited or restricted. The applicants initially indicated no proposed outdoor amplified sound, but recently said they would like to have some, and what this means is not yet well defined.

Applicants propose outdoor lighting consisting of existing fixtures (with potential upgrades), new fixtures at the entrances of the new buildings/building additions, and new pole lights in the front parking lot, along the north and south driveways, and in the back farm fields. Proposal has 12 new 30-foot tall pole lights in the parking and driveway areas, and 28 total pole-mounted flood lights in the back field including 16 around the property's perimeter and 12 in the field (clustered into 3 groups of 4 lights). Applicants state that all outdoor lighting will meet county design standards/requirements for light pollution, and that lighting of the rear field/parking area will be limited to harvest times of year, with access minimized during the winter months. Zoning code requires that all lighting be directed downward and away from adjacent properties and public rights-of-way, and shall be designed minimize ambient light spill. The proposed lighting is rather intense and it is not clear from the lighting plans how the code requirement would be met, which also affects whether this CUP standard will be met. (See [Staff Update section below for revised comments.](#))

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.*

Applicant states the proposed use will not impact adjacent neighboring properties, since it would effectively restart the type of business that had been on site since 1977, with some additional family entertainment activities. The Warm Belly proposal share some similarities with the former operation; however the new activities being added would likely bring more people to the site and increase the number of days with large crowds coming for events (e.g. pumpkin patch, corn mazes, produce sales, etc.) and the degree of increase is difficult to estimate.

Staff notes that the surrounding lands in the town have a mix of farmland preservation, rural residential and mixed-use zoning (to north and south), one commercial property (to the east across the road), and agricultural zoning (to the west under Madison's jurisdiction). The farm adjacent to the south is zoned for ag preservation; the farm adjacent to the north has RM-16 zoning and a conditional use permit for horse boarding. There are residential lots with homes immediately south of the subject property along Vilas Hope Road.

While the current zoning on these properties permits a wide variety of land uses, the properties are generally already developed for these uses so the Warm Belly CUP proposal would not appear to impact their use,

provided the operation provides for adequate traffic management, and controls are in place for noise, lighting, and hours of operation. Staff has concerns with the proposed lighting and the potential for noise.

There are 9 homes located within 500 ft of the proposed business' main activity area, the nearest being 35 ft away. There appear to be 16 homes within 1,000 ft of the site, plus the on-site home. (See Staff Update section below for revised comments.)

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.

Applicant states the most immediate surrounding property is of agricultural and/or farmland preservation designation, and that the proposed use adheres to the requirements of the FP-B zoning, and will not impede the normal and orderly development and improvement of the 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 operation would be similar to how the property has been used for decades, with some added variety in the type of events.

The surrounding lands in the town have a mix of farmland preservation, rural residential and mixed-use zoning (to north and south), one commercial property (to the east across the road), and agricultural zoning (to the west under Madison's jurisdiction. 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.

County staff reached out to City of Madison staff to confirm any concerns with the proposal in light of the Town-City boundary agreement. City staff confirmed they see no need to comment on the proposed CUP.

Applicant proposes a new or updated replacement ground sign near the driveway. A ground sign or pylon sign is allowed based on the property's zoning. Any signage requires a sign permit from Dane County.

4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.

The applicant proposes to use the existing septic field for the facility, located next to the proposed building. These would be separate from the well and septic that serve the home. The site plan shows the overall long-term goal for the growth of the business plan. This plan would be implemented in phases, over time as the business grows.

The project will require stormwater management and erosion control permits from Land and Water Resources Department. Applicant states that all required stormwater and erosion control will meet Dane County and WiDNR standards. Stormwater design and erosion control plan will be completed during final design and submitted for review per proper construction permitting process to Dane County and WiDNR.

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.

Applicant proposes a total of 447 parking stalls, with a looped driveway configuration that will extend off the existing driveway to provide vehicle access around all sides of the facility. They would also widen the main driveway to 24' wide to meet zoning code requirements for 2-way traffic. The parking plan is adequate for the proposed use under the zoning requirements.

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 zoning district. Applicant states that the request is for an Agricultural Accessory Use to the FP-B district, for the uses listed on the application.

FP-B zoning allows agricultural entertainment activities or special events under 10 days/year as a permitted use, (including the incidental preparation and sale of beverages and food), sales of agricultural products produced on the farm. With approval of a conditional use permit, FP-B zoning would also allow agricultural entertainment activities or events more than 10 days per year, the sale of agricultural and dairy products that are NOT produced on the premises, and incidental sale of beverages and snacks.

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

The proposed use is generally consistent with the comprehensive plans, as noted above.

- 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.**

1. 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.

2. 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. Utilizing an existing built infrastructure and repurposing existing Agricultural buildings, the proposed Warm Belly Adventure Farm will breathe life back into an area that used to thrive as a commercial floral and pick-your-own business.

3. 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 states that the existing crop lands will be kept as-is and reused for harvests.

4. 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 the proposed business plan utilizes the existing fields as-is as well as maintains and/or enhances the existing build infrastructure. All adjacent agricultural parcels will continue their respective operations without any substantial impairment.

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

Applicant states that the existing site is mostly to be re-used as-is with the removal of a few noted outdated greenhouses. The only construction within any on-site existing agricultural lands is for the addition of exterior lighting which will not affect the long term agricultural use of that land.

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 applicant has submitted information as part of their application on how those potential nuisances are handled; most of this is described in the section above. At this time Staff does not feel the proposal meets CUP standards #1 and #2 above based on concerns over how lighting and noise will be controlled so as not to pose a nuisance to surrounding properties. (See [Staff Update section below for revised comments.](#))

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 operations that are intended to address the potential conflicts with the land use activity. These are not required as CUP “conditions” for the permit, unless the Town or ZLR Committee wish to impose conditions on the operation based on these. See below for staff comments these requirements:

(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. It would help to have an estimate of the maximum expected number of attendees that the operator could accommodate on site, and the number of large-scale events the owner plans to hold per year.

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 April 3, 2023 the Town Board approved the conditional use permit with the following conditions:

1. No parking on either side of Vilas Hope Road. The Town Highway Superintendent will figure out the distance, and the petitioner will pay for the signage.
2. The stormwater plan must be approved by Dane County.
3. The Highway Superintendent should weigh in on the size of the culvert and the design of the driveway where it meets Vilas Hope Road.
4. No Parking signs shall be posted on the traffic lane on the north side of the building.
5. Any substantial change to lighting plans would be an amendment to the CUP.
6. At the Plan Commission meeting, the petitioners also asked to reserve the option to replace the portapotties with a restroom building in the future. There was no disagreement with this, however it was not included in any motions nor was it brought up again at the Town Board meeting.

STAFF RECOMMENDATION (4/25/23): Staff recommends postponement at this time, so that the applicant can provide sufficient evidence to mitigate the concerns related to lighting, noise, and the number and maximum capacity of large events with over 200 people. With parking capacity for 477 vehicles, and accounting for 10-50 employees, it is conceivable that the site could attract 1,000 to 2,000 attendees if each guest vehicle brings 2 to 4 people. The applicant will need to re-work the lighting plan to be less disruptive to the surrounding properties. Specifically, we request they provide a photometric plan to verify the light intensity on site and at property lines, and shorten the light poles from the proposed 30 ft to 20 ft (as is more typical of commercial sites in Dane County), and provide information on how the light fixtures will meet code since forward-facing flood lights would not meet the zoning code requirement for downward-cast fixtures.

The applicants should also provide more explanation of why it is necessary to light the back farm field after dark, with the proposed operating hours being until sunset and until 9pm during fall and winter; also these time periods should be more clearly defined so that they are enforceable. We also recommend a restriction on outdoor amplified sound (allowing only non-amplified sound).

Following the public hearing, staff recommends that the ZLR Committee discuss the findings of fact as to whether the proposed conditional use meets the applicable 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.

APRIL 25TH ZLR MEETING: The ZLR Committee held the public hearing on April 25th but postponed action on the CUP due to staff concerns that were primarily about the proposed lighting and amplified sound, with regard to meeting the CUP standards.

STAFF UPDATE: After the public hearing, the applicants submitted a revised lighting plan, operational narrative, and event plan in response to the concerns raised by staff. The revised lighting plan appears sufficient to meet the CUP standards. Instead of the original proposal for 28 flood lights in the back farm field aimed in all directions, to 17 lights that are located along the north, east, and south sides of the field with the lights directed downward and westward not toward the homes on Vilas Hope Road. The light pole height is now specified at 20 feet tall for all site lighting, instead of 30 feet or unspecified flood light pole heights in the original plan. The Town of Cottage Grove also has specific standards for lighting in its ordinances, which will govern the details of the site lighting.

The applicants' revised "written statement of intent and operations plan" clarifies that they request daily, amplified, ambient music within the hours of operation, to be focused on the rear fields but would also include outdoor live music events from 4pm to closing, adjacent to the farm store (where the plans show an outdoor picnic/gathering area). However, Town officials indicate that outdoor amplified sound was not discussed with the town during the town's review and approval of the CUP. For that reason, staff recommends that amplified sound be prohibited at this time, and if it is necessary the applicant can request it with a CUP amendment in the future. To be clear, this would not prohibit the business from having non-amplified music and sound as part of its daily operations.

The event plan is more generalized, and specifies that event-specific event plans will be submitted prior to any particular, marketed events such as festivals etc. Hours of operation are unchanged; they are 9am to 9pm once lights are installed (and would be 9am to sunset prior to the installation of the lights). The applicants have not estimated the maximum attendance on site; however they have not objected to the estimates provided in this report, and parking restrictions were made part of the CUP conditions through the town's approval. As a standard procedure, if parking becomes a problem for the operation the CUP can be reviewed and (if necessary) revoked.

Staff findings and recommendation: Staff believes that, based on the information provided by the applicant as summarized above, as well as the conditions of approval recommended below, the proposed use will meet the applicable CUP standards. Staff recommends that the ZLR Committee makes findings of fact as to whether the proposal meets the applicable CUP standards, and recommends approval with the conditions listed below.

Any questions about this petition or staff report please contact Rachel Holloway at (608) 266-9084 or holloway.rachel@countyofdane.com

CUP 2592 Potential Conditions of Approval:

Standard Conditions for all Conditional Use Permits

1. The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operational plan and phasing plan.
2. 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.
3. 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.
4. 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.
5. 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.
6. All vehicles and equipment must access the site only at approved locations identified in the site plan and operations plan.
7. Off-street parking must be provided, consistent with s. 10.102(8). Since the number of patrons has not been identified, if parking capacity becomes an issue this CUP may be reviewed and possibly revoked.
8. 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.
9. 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.
10. The owner must post, in a prominent public place and in a form approved by the zoning administrator, a placard with the approved Conditional Use Permit number, the nature of the operation, name and contact information for the operator, and contact information for the Dane County Zoning Division.
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. The holder of a conditional use permit shall be given a reasonable opportunity to correct any violations prior to revocation.

Other Conditions Specific to CUP 2592

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. Any additional lighting would require an amendment to the conditional use permit.
18. The petitioners have asked to reserve the option to replace the portapotties with a restroom building in the future. Both options are suitable in the location shown on the site plan, subject to condition #5.
19. Outdoor amplified sound is prohibited. Any proposed amplified sound will require an amendment to the conditional use permit.