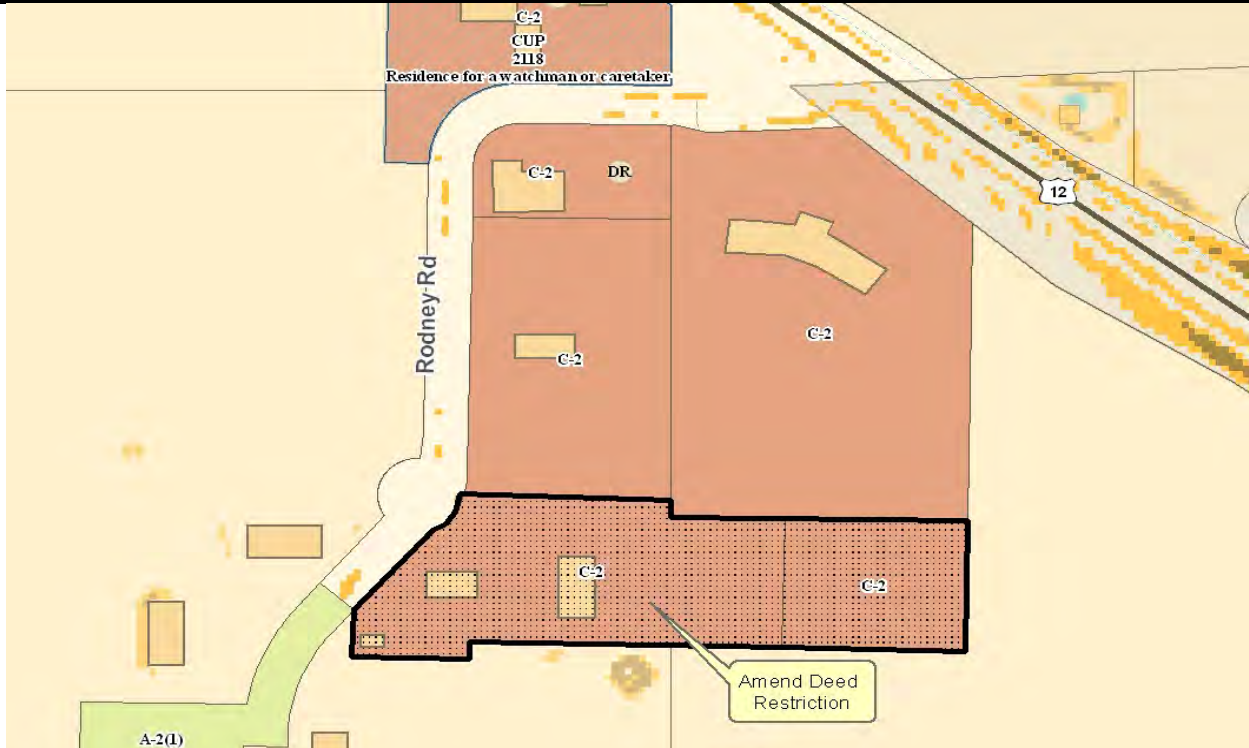




# Staff Report

<b>Public Hearing: October 28, 2014</b>	<b>Petition: Rezone 10755</b>
<b>Zoning Amendment: C-2 Commercial District to C-2 Commercial District</b>	<b>Town/sect: Christiana Section 02</b>
<b>Acres: 4.45 Survey Req. No</b>	<b>Applicant JCL Rentals LLC</b>
<b>Reason: Amend deed restriction to allow outside storage and mini warehouses</b>	<b>Location: 297 Rodney Road</b>

Zoning and Land Regulation Committee



**DESCRIPTION:** The applicant is proposing to amend the existing deed restriction on the property to correct a pending zoning violation. The applicant has constructed three buildings on the property which house several businesses that are not listed as acceptable uses. The applicant has divided the parcel by recording a condominium plat which allows multiple businesses to operate on the site. The proposal will also allow outdoor storage of material which is currently prohibited. The applicant requests that the deed restriction be amended or be eliminated to allow the permitted uses listed in the C-2 Commercial Zoning District.

**OBSERVATIONS:** The original 2-acre parcel was zoned in 2004 to allow for a soil testing and excavating business. Additional acreage was added in 2005 under Zoning Petition #9346 to allow the excavating business to expand. The approval limited the land use to the storage of contractor’s machinery, sale and storage of building materials, and the storing of motor vehicles. The restriction prohibited outside storage and any division of the parcel.

In 2008, the landowner recorded a condominium plat which divided the property and allowed the landowner to sell off portions of the buildings to other businesses. Currently there several businesses/occupants that violate the existing deed restrictions. They are a coffee warehousing business, trucking company, and a unit used for personal storage. One portion of a building has been configured into mini-warehouse compartments.

The property is located approximately 400 feet from the Village of Cambridge. The entire area consists of Class II soils. No other sensitive environmental features observed.

**TOWN PLAN:** The property is located in the town’s agricultural preservation area. Limited non-farm commercial development may be allowed on properties in the US Highway 12/18 corridor within 1.5 miles of the village of Cambridge western boundary. The town’s review of zoning changes sets development to a scale and intensity appropriate to protect the town’s rural character. The town plan does not address commercial development via condominium plat in their land use plan.

**RESOURCE PROTECTION:** There are no resource protection corridors located on the property.

## Staff Report continued REZONE 10755

**STAFF:** The current deed restriction limits commercial uses exclusively to the following: "repairs, storage and service of contractor's machinery and equipment; bulk fuel storage, sales and storage of lumber and building material; and parking or storing of motor vehicles." Outdoor storage and further division of the property were also expressly prohibited. See attached deed restriction.

The recording of a condominium plat does not require review of the County or the Town. With the ability to have up to 14 separate businesses operating on the property, the Town was unaware of this development change. This increase of commercial activity may be beyond what was intended for the site. The Town's Comprehensive plan requires proposed commercial development to have a complete site plan and details of the proposed use of the buildings. No plan was provided to the Town of Christiana.

**STAFF UPDATE:** County Staff has been working with the Town of Christiana Board to resolve this issue. It was suggested that the deed restriction be amended to limit the land uses to the ones currently on the property and to revise the condominium plat to reduce the number of businesses/ownership units to eight. See Staff memo to the Town of Christiana dated December 29<sup>th</sup>.

After much discussion, the Town Board had decided that the multitude of businesses and the type of businesses were not suited for this particular site.

**TOWN:** Denied.

If denied, Staff suggests the following findings of fact:

1. The proposed changes conflict with the policies found for commercial development in the Town of Christiana Comprehensive Plan.

*Town Plan page 41:*

*Non-farm commercial uses are generally discouraged in the town, except in the Highway 12/18 corridor within 1.5 miles of the Village of Cambridge western boundary. The town may consider zoning changes or conditional use permits to accommodate existing, established commercial uses in the town, or for limited, family-owned businesses that serve town residents. Conditional zoning approval will be used to ensure that any commercial use fits with the rural character of the town. Such conditional approval may include, but is not limited to, deed restrictions limiting the range of permitted uses, hours of operation, or design considerations, along with prohibitions against additional division of land or ownership.*

2. The potential of 14 businesses with undefined uses is too intense for the site and will have a negative impact on the existing roadway system.

**ZLR 2/10/15:** A motion was made by BOLLIG, seconded by KOLAR, that the Zoning Petition be recommended for denial. The motion carried by a voice vote.

**County Board 2/19/15:** The representative for the applicant expressed concerns that the Town Action Report was inaccurate. He stated that the Town had approved a change to allow outdoor storage on the property. The petition was re-referred back to the ZLR Committee for clarification.

**Staff Update:** Dane County has filed a lawsuit with regards to the landowner violating the current deed restrictions on the property. Since then, the landowner has been cooperative in working with the Town of Christiana and Dane County to find a solution to the matter.

On April 23<sup>rd</sup>, the Town of Christiana approved amendments to the deed restrictions which would reduce the amount to development to an acceptable level. The approval limits the type of businesses on the property and limits the number of businesses to a maximum of 5. The approval also calls for the condominium plat to be revised to make future owners aware of the limitations of the property. See attached motion of the Town Board.

Staff recommends approval of the petition with the Town conditions.

Petition 10755  
JCL Rentals LLC  
297 Rodney Road  
Section 2  
Town of Christiana

**Motion** by Rettmann, seconded by Lowrey to amend the zoning district classification for Lot 4, CSM 11614, Section 2, Town of Christiana, to C-2 Commercial Zoning District contingent upon the following conditions being met within 90 days of adoption:

1. The deed restriction found under Dane County Register of Deeds document #4138178 shall be amended to the following restrictions:
  - a. The property shall be limited exclusively to the following land uses: Contractor's offices and indoor storage of contractor's equipment, vehicles, and construction materials. Units #5 and #6 are permitted to be used for the indoor storage of personally owned recreational vehicles, subject to Section 2, below. Warehousing of personal belongings in all other units is prohibited. Unit spaces shall not be used for living quarters or act as residences.
  - b. Outside storage of materials, equipment, bulk fuel tanks or vehicles is prohibited except for the specified areas as shown on the attached Site Development Plan (Part II) for the benefit of Unit #7 having dimensions of 100 x 40 feet and 30 x 80 feet. Business vehicles may be stored on the premises in the evening and during non-business hours.
  - c. The building layout shall comply with the attached Site Development Plan. Construction of additional buildings or expansion of buildings is prohibited, but remodeling of existing structures without a footprint increase is permitted.
  - d. There shall be a maximum of 8 condominium units located the property. The ownership units shall comply with boundary spaces as designated on the attached Site Development Plan. Unit spaces shall not be further divided or partitioned off to create separate ownership/rental spaces.
  - e. With respect to the 8 condominium units, there shall be no more than 5 owners of those 8 units. Further, there shall be no more than 5 businesses in operation at any time within those 8 units. "Business" is defined as an ongoing commercial concern operating out of one or more units. Leasing of units shall be permitted provided the land use of the tenant is consistent with the deed restrictions.
  - f. All Deed Restrictions shall terminate in the event that the subject property is annexed in the future to the Village of Cambridge, WI.
  
2. The Board of Directors or "Manager" of the JCL Condominium Association and Jolly Rogers of Cambridge, LLC, shall enter into an agreement with the Town of Christiana and Dane County acknowledging that occupants of Unit #1 and Unit #2 are in violation of the recorded deed restrictions for the property, subject to the following:
  - a. The coffee warehousing business found within Unit #1 may remain lawfully in operation at said Unit #1 for so long as the current coffee warehousing business remains an ongoing concern. Upon termination or sale of said business, Unit #1 shall no longer be permitted to house any business non-compliant with the generally applicable deed restrictions.
  - b. Further, the owner of Unit #2 shall cause the termination of the current lease of said unit with the current tenant trucking company, based on a 90-days notice of termination, and after said 90 days, the current tenant shall be removed from the premises. The owner of Unit #2 shall give tenant notice of termination within 5 days of final approval of the rezone

petition by the Dane County Board. The Notice shall be submitted to the Town and Dane County concurrent therewith.

3. The Board of Directors or "Manager" of the JCL Condominium Association and the Benno C. Fischer Trust, shall enter into an agreement with the Town of Christiana and Dane County acknowledging that occupants of Unit #5 and Unit #6 are in violation of the recorded deed restrictions for the property, subject to the following: The personally owned recreational storage / use found within Unit #5 and #6 may remain lawfully in operation at said Units for so long as the current owner, or a related affiliate primarily owned by Mr. Ben Fisher, remains the owner. Upon sale of said Unit(s) to a party whose ownership is not primarily controlled by Ben Fischer, Unit #5 and #6, as applicable, shall no longer be permitted to house any business non-compliant with the generally applicable deed restrictions.
4. The Board of Directors or "Manager" of the JCL Condominium Association shall enter into an agreement with the Town of Christiana and Dane County acknowledging the following:
  - a. The exterior of the most easterly building (Unit 8) shall be reconstructed in the following manner: The 12 existing 9x9 overhead doors located on west side of the building shall be reduced to a maximum of 2 overhead doors (removal of 10 doors). All doors on the east side of the building shall remain at their present location. There may be a total of 2 walk-in service doors. The Unit will not be used for mini-warehouse purposes. The physical changes required shall be completed within one year of adoption.
  - b. The owner of Units #2, #7, and #8 shall have the right to store a single personal recreational vehicle (e.g. motor home, camper, trailer or the like) within any one of those units.
5. The declaration of condominium of JCL Condominium which was recorded on August 28, 2008 as Document No. 4463293 in the Dane County Register of Deeds office shall be amended in the following fashion:
  - a. The JCL Condominium Plat shall be amended to designate a maximum of eight (8) condominium units as shown on the attached Site Development Plan. The Declaration shall reflect the restrictions specific in section 1.e., above, limiting the condominium to 8 units, 5 owners, and 5 businesses.
  - b. The Area Reserved for future expansion shall be revised to state that no expansion is permitted so long as the property is within the jurisdiction of the Town of Christiana and subject to Dane County zoning.
  - c. Language shall be added to the declaration requiring Town approval for any future amendments made to the declaration until such time as the property is annexed into the Village of Cambridge.
  - d. The language as found under Section 7 of the Declaration shall be amended to the following:

Use of Property:

~~All property designated for commercial and business use consistent with the Dane County Ordinances and Town of Christiana Ordinances and shall be used and devoted exclusively to commercial and business uses.~~ The property shall be limited exclusively to the

following land uses: Contractor's offices and indoor storage of contractor's equipment, vehicles, and construction materials. Warehousing of personal belongings in all other units is prohibited. Outside storage of materials is prohibited except for designated areas as shown on the Site Development Plan. Unit spaces shall not be used for living quarters or act as residences. Uses consistent with the deed restrictions for Lot 1 of Certified Survey Map 11614 are permitted, and said restrictions should be referenced for additional information. No such use may unreasonably interfere with the use and enjoyment of the Common Elements and their Units by other Unit Owner. There may be no storage or activity which increases the insurance rates of the Condominium.

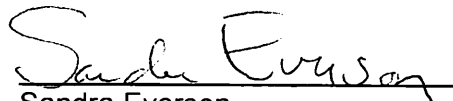
6. The Town hereby stipulates that is aware of the current alleged violations of deed restrictions asserted by Dane County and that the Town agrees to the above-described changes in order to resolve the alleged violations affiliated with the subject property to its satisfaction.
7. The Town acknowledges that the enforceability of the above-described changes is contingent upon: (1) final approval of same by Dane County; and (2) dismissal by Dane County of Case No. 2015 CX 05.
8. The deed restrictions provided herein shall be enforceable at law or equity against any party who has or acquires any interest in the land subject to these restrictions by the following who are named as grantees and beneficiaries with enforcement rights:
  - a. The County Government of Dane County, Wisconsin provided that the lands are under the jurisdiction of the County zoning ordinance at the time the enforcement action is commenced, and;
  - b. The Town Government of the Town of Christiana, Dane County, provided that the lands are within the jurisdiction of said Town at the time the enforcement action is commenced.
  - c. The owner(s) of record of any lands that are located within 300 feet of the subject property.

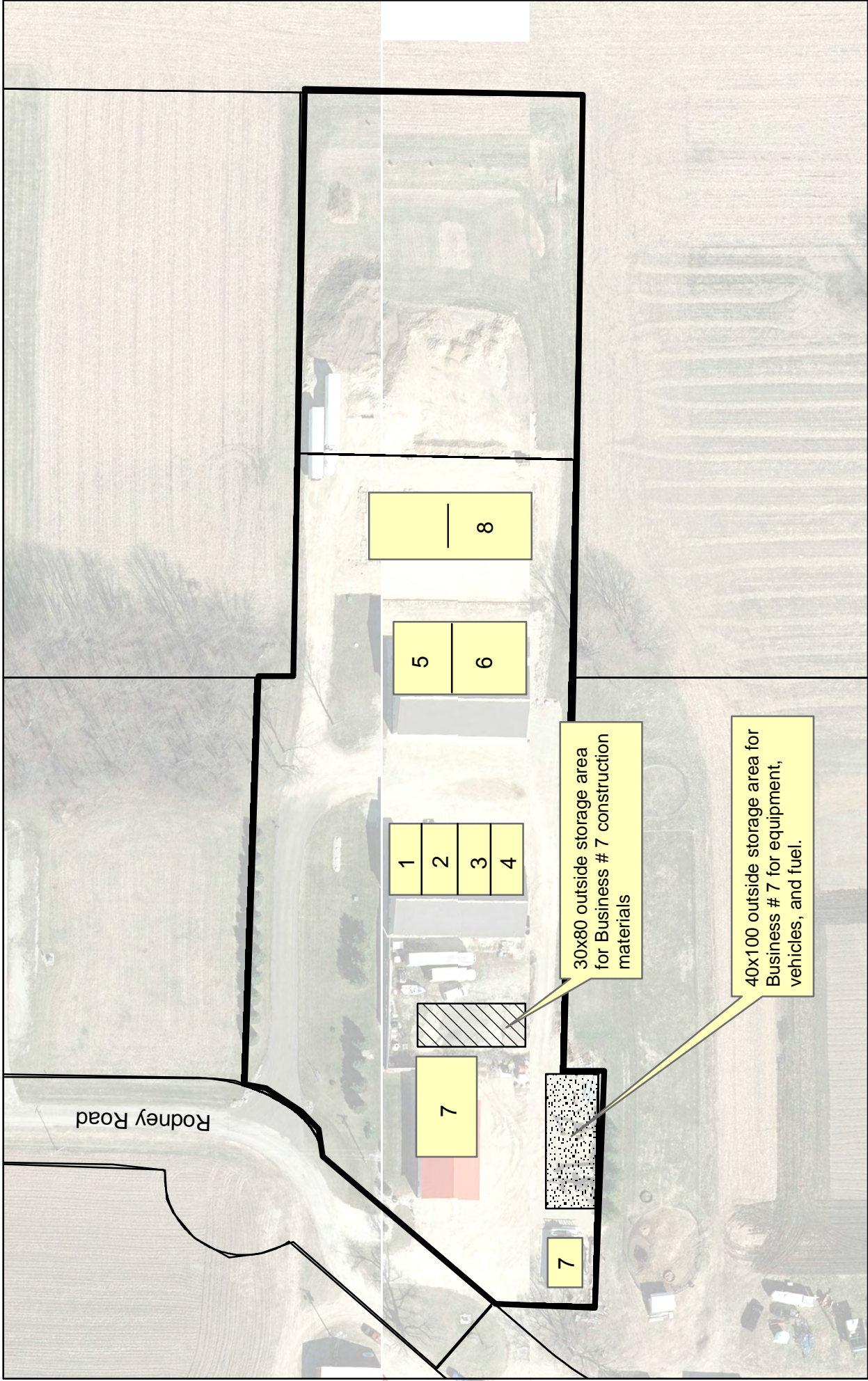
Motion Approved by Vote of: 3-0

Dated this 23 day of April, 2015.

  
Gary Rattmann  
Town of Christiana Chairman

Dated this 23 day of April, 2015.

  
Sandra Everson  
Town Clerk, Town of Christiana



# Site Development Plan 297 Rodney Road Town of Christiana

1. Outside storage is prohibited other than specified areas.
2. Construction of additional buildings is prohibited.
3. Spaces shall not be divided or partitioned off to create separate units. Building 8 may be divided into 2 spaces under one ownership.
4. Units shall not be used as living quarters or residences.

