

Staff Report



Zoning and Land Regulation Committee

Public Hearing: **September 26, 2023**

**Conditional Use 02604**

Zoning Amendment Requested:

**TO CUP: EXPAND EXISTING TYPE 1 SALVAGE OPERATION**

Town/Section:

**BURKE, Section 8**

Size: **1.9 Acres**

Survey Required:

Applicant

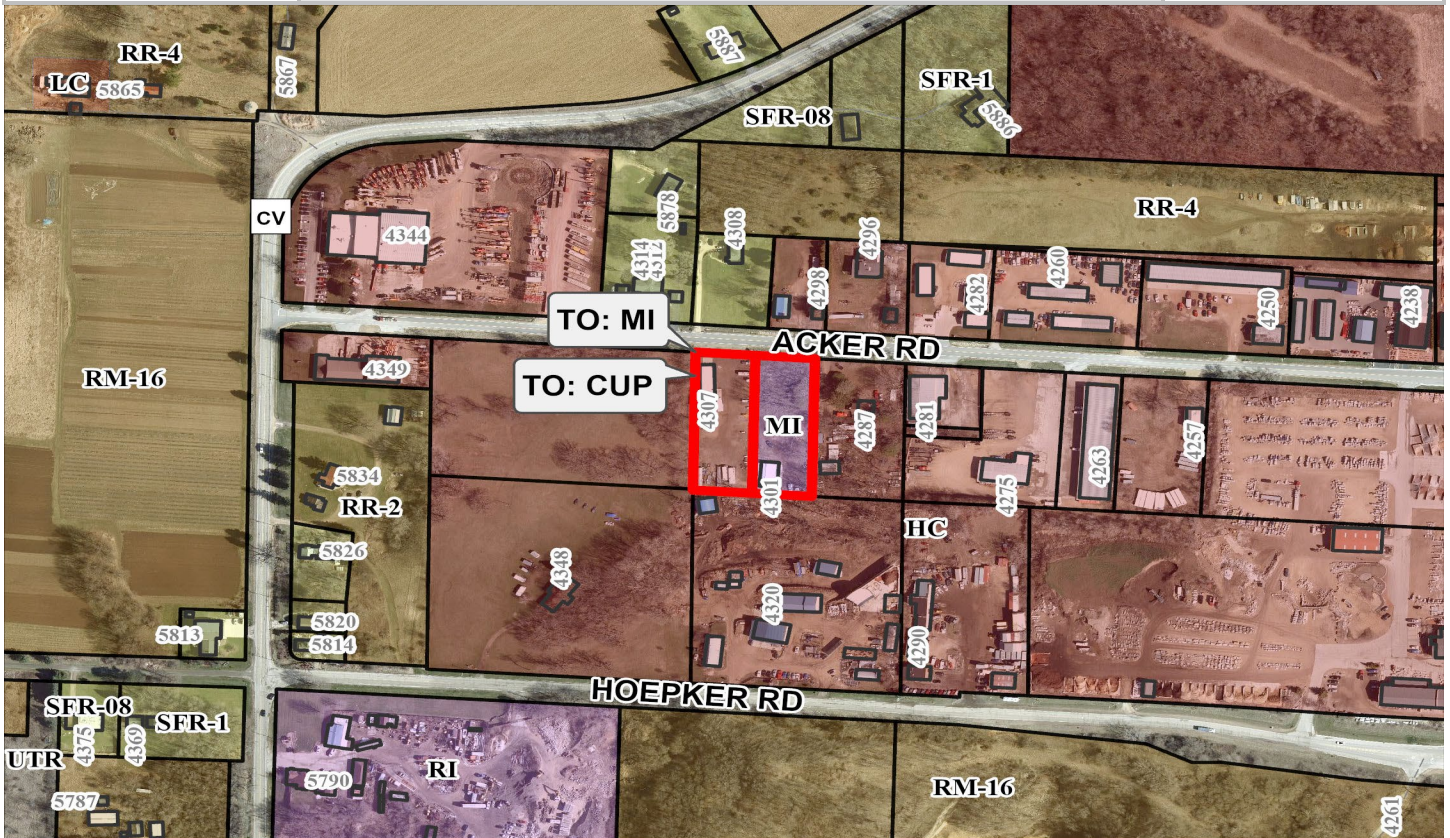
**ZACHARY BRUMM**

Reason for the request:

**EXPAND EXISTING TYPE 1 SALVAGE OPERATION**

Address:

**4301 & 4307 ACKER RD**



**DESCRIPTION:** Zachary Brumm requests approval of a conditional use permit (CUP) on the existing ~1 acre parcel located at 4307 Acker Road, between County Highway CV and US 51 in the Town of Burke. The CUP is requested to allow the operation of a “Type 1” salvage operation – technically an expansion of the one that exists on the adjacent lot at 4301 Acker Road (which operates under approved [CUP #2570](#)).

This petition was submitted to resolve a zoning violation. On June 22<sup>nd</sup> a zoning ordinance violation letter was sent to the owner after staff observed that the salvage business use had expanded to this lot without the proper zoning to allow it. The applicant has submitted a separate rezoning petition ([Rezone petition 11976](#)) to rezone the property to MI (Manufacturing and Industrial). This CUP petition may only be approved if Rezone 11976 is first approved.

**OBSERVATIONS:** The subject property is currently zoned HC (Heavy Commercial). The previous owner used the property for an RV generator repair business and vehicle storage. Surrounding land uses are a mix of heavy commercial, outdoor storage, open space, and rural residential. No sensitive environmental features observed. The property is located in a defined “protected area” in the town / city cooperative plan (areas not subject to early attachment to the city). The property will eventually be attached to the City of Madison in 2036.

In the Chapter 10 zoning ordinance, which was recently updated by 2023-OA 009 in August to clarify the language regarding salvage businesses, a “salvage operation” includes any use requiring a motor vehicle salvage dealer’s license under Wis. Stat. s.218.205. This definition excludes operations that hold a scavenger license, solid waste recycling

centers, composting facilities, or processing operations meeting the definition of an agriculture-related use. The proposed Type 1 salvage license would allow the storage and dismantling of vehicles on the property and sales of parts. According to the application, the operation would involve mostly sales of parts over the internet, with little retail traffic.

The business would employ 3 full time employees plus the owner, with proposed hours of operation of 8AM-5PM Monday-Friday, and 8AM-Noon on Saturday. An average of 5-30 tow truck trips / day are anticipated. The yard would be fenced to screen the outdoor storage area from view.

**RESOURCE PROTECTION:** No sensitive environmental features are present on site. Proposed development has an approved erosion control and stormwater management plan from Dane County Land and Water Resources; however the applicant must provide a maintenance agreement and financial security instrument before permits can be issued.

**COMPREHENSIVE PLAN:** The property is located in the town's Industrial / Business planning area. The town plan provides the following description:

**Industrial / Business**

**Description:** This future land use category includes indoor manufacturing, warehousing, distribution, and office uses, with outdoor storage areas. Also included in this category or uses like retail sales or service businesses, medical, dental and veterinary clinics, banks, offices, and office buildings, to list a few.

**CITY OF MADISON PLAN:** The property is covered by the City of Madison's Hanson Road Neighborhood Development Plan. The plan designates the property and surrounding area as "Industrial". Unless the proposal will involve the construction of more than one principal building, it will not constitute "development" as the term is defined by the [town/city cooperative plan](#). It does not appear City of Madison review will be required for the project.

Pending any concerns raised by the town during the course of its review, or by the public at the ZLR Hearing, the proposed conditional use permit appears consistent with applicable comprehensive plan policies. (For questions about the comprehensive plan, contact Senior Planner Majid Allan at (608) 267-2536 or [allan@countyofdane.com](mailto: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. Below is the list of the applicable standards from s.10.101(7)(d) of the Zoning Code, and a summary of relevant facts 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 the storage of vehicles will be screened by a fence, and the type of operations that may create noise will be within the building. As noted above, all salvage operations must be licensed through the Wisconsin DOT. The proposed Type 1 salvage license would allow the storage and dismantling of vehicles on the property and sales of parts.

- 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 neighborhood is almost all heavy commercial and industrial type uses, and the property was previously used for an RV generator repair business with many RVs temporarily stored on site. The property will be screened by a fence and well maintained.

The business would employ 3 full time employees plus the owner, and operate 8AM-5PM Monday-Friday and 8AM-Noon on Saturday. There would be minimal traffic due to the business reliance on mostly online retail sales. The yard would be fenced to screen the outdoor storage area from view.

**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 that this area of the town will eventually be attached to the City of Madison pursuant to the cooperative plan between the municipalities, and the City has this area planned for future industrial use.

Staff notes the area is already developed and is within the urban service area for municipal services. No new site development is proposed here and the surrounding area consists primarily of commercial and industrial properties with a mix of HC Heavy Commercial and MI zoning. There are some properties with residential use and SFR zoning, though the area is planned for future industrial use. The proposed conditional use would not appear to impede the development of surrounding properties.

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

Applicant states that this standard will be met. The utilities, access roads, drainage, and other site improvements appear sufficient to support the proposed conditional use. There is an operational septic system on site per Public Health Department records.

**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.***

According to the application, the operation would involve mostly sales of parts over the internet, with little retail traffic, on average 5 to 30 vehicle trips per day. Off street parking is provided on site within the front yard, and vehicle storage for the salvage operations would be set back approximately 100 feet from the road.

**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 proposed MI zoning district. Salvage operations are an allowable conditional use in the district.

**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.

**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).***

Not applicable.

**POTENTIAL NUISANCES ASSOCIATED WITH THE CONDITIONAL USE:** The potential nuisances that pertain to salvage operations most likely involve noise, vehicle traffic, and the need for visual screening. The applicant's CUP application addresses how these potential nuisances are handled, as noted above.

Under Dane County Zoning Ordinance section 10.103, there are special requirements for salvage operations. Such operations may not be within a zone of contribution of a municipal well. The property is not located wholly or partially within zone of contribution.

Potential conditions of approval specific to this CUP can be developed after public input and deliberation by the Town and the Zoning and Land Regulation (ZLR) Committee.

**TOWN ACTION:** On September 20, 2023 the Town Board approved the CUP with the following conditions:

1. This conditional use is strictly for Zach Brumm, doing business as ZB Salvage & Recycling located 4307 Acker Road in the Town of Burke.
2. Owner must provide sanitary facilities such as well and septic.
3. The Town Board and Plan Commission approve the following hours of operation.

- a. 8:00 a.m. to 5:00 p.m., Monday through Friday; 8:00 a.m. to 12:00 p.m., Saturday.
  - b. No outdoor operations of any kind shall take place on Sundays or legal holidays.
4. Dismantling of vehicles shall take place inside the building.
5. There will be no car crushing at this location.
6. All business vehicles and machinery shall be kept in running condition and in good maintenance.
7. Driveway improvements must be permitted by the Town and must be with stormwater run off in mind. Neighbor properties must not be negatively impacted. There shall be an apron, size and placement approved by Town engineer, to mitigate mud and gravel to travel out onto Acker Rd.
8. Property must contain lighting that avoids polluting neighborhood properties.
9. Outdoor signage must meet Dane County zoning requirements.
10. Owner shall meet DNR and DOT standards for indoor and outdoor storage of salvaged vehicles.
11. An on-site hazardous material spill containment kit large enough to capture a complete spillage is required.
12. Outdoor storage of salvage materials, merchandise, vehicles, and equipment shall be done in a well-kept organized manner.
13. There will be no vehicle storage (stacking) higher than fence height in front.
14. Property must be screened. Front fence should be 8 ft in height (corrugated steel or similar).
15. The existing trees bordering the property shall be maintained and serve as screening between the outdoor storage areas and adjoining properties.
16. All hazardous materials or liquids must be stored properly according to State regulations including the registration or opt-out certification with the DNR Refrigerant Recovery Program.
17. Business shall register with the DNR Stormwater program and complete the Stormwater Pollution Prevention Plan and operate in accordance with the requirement of the Wisconsin Pollutant Discharge Elimination System.
18. Fuel storage. All fuel storage must comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment.
19. The applicant shall apply for and receive all other required local, state, and federal permits including stormwater runoff permits for auto salvage.
20. The conditional use permit shall be for a Type 1 License Salvage Yard only.
21. The Conditional Use Permit (CUP) shall become void should these conditions not be followed or should ZB Salvage and Recycling be sold or leave parcel 4307 for any reason.

The town's approval was only for this property at 4307 Acker Road. Because of this, if this CUP is approved it would not replace the existing CUP 2570 on 4301 Acker Road. Both CUPs would exist separately on these lots.

**STAFF RECOMMENDATION:** At this time, staff believes the applicant has provided sufficient information to mitigate the potential for nuisances and demonstrate how the proposed use will meet all of the required standards for CUP approval. This includes: low traffic flows, reasonably limited hours, the proposed screening fence, and the conditions imposed by the Town of Burke. These things would help ensure compatibility with the surrounding neighborhood and the MI zoning district.

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.

Pending any comments at the public hearing, staff recommends that the ZLR Committee makes a finding as to whether the proposed conditional use meets the applicable CUP standards. If the Committee agrees that the standards are met, staff recommends approval of the CUP with the potential conditions listed below. Any questions about this petition or staff report please contact Roger Lane at (608) 266-9078 or [lane.roger@countyofdane.com](mailto:lane.roger@countyofdane.com)

**Possible CUP 2604 Conditions:**

*Standard Conditions for all Conditional Use Permits*

1. Any conditions required for specific uses listed under s. 10.103, specifically, 10.103(17).
2. The physical development and operation of the conditional use must conform, in all respects, to the approved site plan, operation plan and phasing plan.
3. New and existing buildings proposed to house a conditional use must be constructed and maintained to meet current requirements of applicable sections of 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 county 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 county 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 and circulation must be provided, consistent with s. 10.102(8) of County Ordinances.
9. If 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 County Zoning Administrator or designee may enter the premises of operation in order to inspect those premises and to ascertain compliance with these conditions or 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 must post, in a prominent public place and in a form approved by the county zoning administrator, a placard with the approval of the 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.
12. 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.
13. 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 reasonable opportunity to correct any violations prior to revocation.

*Conditions Unique to CUP 2604*

14. This conditional use is strictly for Zach Brumm, doing business as ZB Salvage & Recycling located 4307 Acker Road in the Town of Burke.
15. Owner must provide sanitary facilities such as well and septic.
16. Hours of operation shall be limited as follows:
  - a. 8:00 a.m. to 5:00 p.m. on Monday through Friday; 8:00 a.m. to 12:00 p.m. on Saturday.
  - b. No outdoor operations of any kind shall take place on Sundays or legal holidays.
17. Dismantling of vehicles shall take place inside the building.
18. There will be no car crushing at this location.
19. All business vehicles and machinery shall be kept in running condition and in good maintenance.

20. Driveway improvements must be permitted by the Town and must be with stormwater runoff in mind. Neighbor properties must not be negatively impacted. There shall be an apron, size and placement approved by Town engineer, to mitigate mud and gravel to travel out onto Acker Rd.
21. Property must contain lighting that avoids polluting neighborhood properties. Any outdoor lighting shall be in accordance with Dane County zoning ordinance section 10.102(5).
22. Outdoor signage must meet Dane County zoning requirements.
23. Owner shall meet DNR and DOT standards for indoor and outdoor storage of salvaged vehicles.
24. An on-site hazardous material spill containment kit large enough to capture a complete spillage is required.
25. Outdoor storage of salvage materials, merchandise, vehicles, and equipment shall be done in a well-kept orderly manner.
26. There will be no vehicle storage (stacking) higher than fence height in front.
27. Property must be screened. The front fence shall be 8 feet in height (made of corrugated steel or similar).
28. The existing trees bordering the property shall be maintained and serve as screening between the outdoor storage areas and adjoining properties.
29. All hazardous materials or liquids must be stored properly according to State regulations including the registration or opt-out certification with the DNR Refrigerant Recovery Program.
30. Business shall register with the DNR Stormwater program and complete the Stormwater Pollution Prevention Plan and operate in accordance with the requirement of the Wisconsin Pollutant Discharge Elimination System.
31. Fuel storage. All fuel storage must comply with ATCP 93, Wisconsin Administrative Code, including provisions for secondary spill containment.
32. The applicant shall apply for and receive all other required local, state, and federal permits including stormwater runoff permits for auto salvage.
33. The conditional use permit shall be for a Type 1 License Salvage Yard only.
34. The conditional use permit shall become void if the operator is found to be in violation of these conditions. The CUP shall expire upon sale of the property or upon ZB Salvage and Recycling ceasing to operate on the premises.