

MEMORANDUM

Business Items H & I

From: Administrator/Staff

To: Plan Commission

Re: Plan Commission review & recommendation on a Conditional Use Application submitted by Kunes Appleton Properties for a proposed addition to the existing heavy vehicle sales and rental principal building located at 2615 West American Drive, specifically described as Tax ID #006-0341-01.

AND

Plan Commission review & recommendation on a Site Plan Application submitted by Kunes Appleton Properties for a proposed addition to the existing heavy vehicle sales and rental principal building located at 2615 West American Drive, specifically described as Tax ID #006-0341-01.

Please find below comments from Code Administrator Kussow with **updates/revisions made by Code Administrator Greenberg** and **Staff Comments**:

Property Information Specific to Tax ID # 006-0341-01:

1. Specific Site Location: The subject site is the Kunes RV property addressed 2615 West American Dr.
2. Parcel Profile Report is enclosed with this memo for your reference. Additional applicable property information not included in the Parcel Profile Report is described below:
 - a. The subject property is located in the Town's General Business (B-3) District.
 - b. There are no floodplain concerns; **however, multiple wetlands were identified in a 2016 Stantec study.**
 - c. No portion of the subject property is located within shoreland and therefore, the subject property is not subject to Winnebago County zoning jurisdiction.
 - d. The subject property is not located in Outagamie County Airport Zoning but is subject to the 1,009 ft. Airport Height Limitation Zone.
 - e. The subject property is located in the Fox West Sewer Service Area and Town of Clayton Sanitary District #1.
 - f. **The site is currently served by a sanitary holding tank; however, the proposed project involves removing the sanitary tank and connecting the current building, proposed addition, and a manhole for RV grey and black water to the sanitary main in the American Drive right-of-way.**
 - g. **The site is currently served by a well, but the proposed project involves connecting the proposed addition and existing building to the water main in the American Drive right-of-way.**
 - h. The Future Land Use Map of the Town Comprehensive Plan identifies the subject property being in the Tier 1 development tier and the "Business Park" future land use category.
 - i. The existing "Heavy Vehicle Sales and Rental" land use is a Conditional Use in the General Business (B-3) District.
3. Zoning of Surrounding Properties:
 - a. North: B-3 (General Business District) & I-1 (Light Industrial District)
 - b. South: USH 10; I-1 (Light Industrial District) south of USH 10
 - c. East: A-2 (General Agriculture District)
 - d. West: B-3 (General Business District)

General Application Details & Background Information:

General Application Details:

The applicant is proposing expansion of the existing heavy vehicle sales and rental land use via a 110' x 112' 6" addition consisting of new service bays and an exterior covered prep area. The applicant is also requesting after-the-fact approval for expansion of the gravel outdoor display/storage area. **An additional driveway to American Drive is part of the proposal.**

Stormwater management is proposed to be directed to the existing regional stormwater pond located north of the subject property.

The proposed building addition and expansion of the outdoor display/storage area requires a Conditional Use Permit and Site Plan Review approval.

Background Information:

In 2017, the previous property owner (Horn RV) received Site Plan Approval to expand the gravel display area on the subject property. **The approved site plan authorized an "L" shaped gravel display area that was to be installed adjacent to two wetlands, delineated by Stantec in 2016.** That plan also included additional lighting and landscaping. A copy of the plans approved in 2017 is included for your reference.

In 2022, the gravel display area was expanded beyond the gravel display area approved in 2017 without any approvals from the Town, County, or Wisconsin Department of Natural Resources (DNR), and in violation of Town of Clayton Zoning Code of Ordinance requirements. Additionally, the following outstanding issues resulted from the 2022 expansion:

- Stormwater management & erosion control: No stormwater management or erosion control permits/approvals were obtained from Winnebago County or the DNR.
- Wetland filling: Wetlands were filled without any DNR approval.
- Landscaping required/installed as part of the 2017 approval was either never installed or removed.

Special Standards for Principal Land Uses:

Special standards for the "heavy vehicle sales and rental" land use are found in Sec. 9.08-291, as follows:

"Outdoor display areas and other activity areas shall be located at least... 25 feet from a property in a commercial or mixed-use zoning district."

The submitted plans comply with this requirement.

Special Site Design Principles and Architectural Standards

The "heavy vehicle sales and rental" land use is subject to the special site design principles and architectural standards outlined in Division 8 of Article 8 of the Code of Ordinances. This section of the ordinance makes reference to the following attachments of the zoning code:

- Attachment B, Horizontal Site Design Standards
- Attachment C, Architectural Design Standards
- Attachment D, Architectural and Landscape Design Zones
- Attachment E, Landscape Design Standards
- Attachment F, Environmental and Energy Efficiency (E³) Guidelines

Per Attachment D, this property is located in the Tier 1 architectural and landscape design zone.

Horizontal Site Design Standards (Attachment B):

Driveways & Vision Clearance Triangle: There is one existing driveway to West American Dr. on the west side of the property. One new driveway to West American Dr. on the eastern side of the property is proposed.

Per Attachment B, "driveways shall not exceed a maximum width of 36 feet at their juncture with the street pavement..." The proposed new driveway **shown on the Site Plan with revision date**

of May 10, 2024, is 50 feet at its juncture with the street pavement, which does not comply with Attachment B.

However, at its April 10, 2024, meeting, the Plan Commission noted a willingness to approve the driveway as proposed, due to concern for vehicle safety, given the typically large size of vehicles accessing the site. The Plan Commission also required that the applicant install a culvert clean-out that must be constructed to Town standards.

It should be noted that there is no explicit language in the Ordinance or Horizontal Design Standards that authorizes the Plan Commission or Zoning Administrator to modify Sec. A.(1)(e). In addition, Sec. 9.07-55 (Conditional Uses) states that: A condition of approval shall not lessen development standard or other requirement contained in this chapter.

Stormwater and Erosion Control:

Stormwater management is proposed to be directed to the existing regional stormwater pond located north of the subject property. A revised Stormwater and Erosion Control report prepared by Excel Engineering, dated May 10, 2024 was submitted to the Town. That report notes that the site drains to the north to an existing culvert which then drains stormwater under American Drive to the regional stormwater management pond north of the property. The report notes that due to clay soil conditions, the site is exempt from infiltration requirements and states that all peak discharge requirements and stormwater quality requirements have been demonstrated. That report will need to be reviewed and approved by Winnebago County and the Wisconsin Department of Natural Resources (DNR). Documentation of County and DNR stormwater management and erosion control permits/approvals have not been provided by the applicant.

Wetlands:

A 2023 wetland delineation by Evergreen Consultants verified that two of the wetlands identified in an earlier (2016) delineation by Stantec, were disturbed/filled due to the 2022 outdoor parking/display area expansion. According to a 5.29.24 email from Jason Daye of Excel Engineering, the wetland restoration work on the east side of the lot has been completed. Mr. Daye also noted that (after the fact) wetland fill permits had been applied for with the DNR.

- Wetland disturbance/filling – US Army Corp of Engineers (USACE) jurisdictional determination and WI DNR permits/approvals for wetland disturbance/filling shall be obtained, and copies of such determination and permits/approvals shall be provided to the Town.

Architectural Design Standards (Attachment C):

The subject property is in the Tier 1 architectural design zone per Attachment D, Architectural and Landscape Design Zones.

Existing Structures:

Sec. A. (5) addresses architectural design standards for existing structures as follows:

- *Any additional square footage added to these structures must be in full compliance with the architectural design standards.*
- *Percentages of Acceptable Exterior Building Materials may be decreased to allow for consistency in architectural design with the existing structures.*

Exterior Wall Materials:

The proposed exterior wall materials of the addition consist of roughly 50% architectural metal wall panel, which is not listed as “acceptable exterior building materials” per the Town code with the lower 50% consisting of concrete masonry unit block which is an acceptable material. This mix of materials appears consistent with the materials on the existing building. In addition, the applicant provided: “[The design was] to maintain architectural consistency and provide a

uniform building, exterior building materials consistent with the existing building materials are proposed.”

Sec. A. (2) (a) (1) states that: Acceptable Exterior Building Materials shall cover 75 percent or more of all exterior wall surfaces. However, Sec. A. (2) (a) provides allowances for the Town to decrease the required percentage of “acceptable exterior building materials” as follows:

1. *In those areas deemed to be of limited exposure to the general public, percentages may be decreased so long as the intent of this provision is maintained. Additional limitations to public view may be achieved by building location, orientation, additional landscaping or additional screening.*
2. *For those uses that require the location of exposed overhead or coiling doors, and not allow for the aggregate percentages to be achieved, acceptable building materials may be decreased to accommodate their necessity for the building use, so long as the intent of this provision is maintained. The Town Board has the authority to approve additional landscaping, acceptable material in other areas, screening, environmental and energy efficiency provisions, a reduction in the number of doors and building location within the parcel to maintain the aesthetic value of the area and maintain the intent of this provision.*

Additionally, as noted above, Sec. A. (5) (d) allows for the percentage of acceptable *Exterior Building Materials to be decreased to allow for consistency in architectural design with the existing structure(s).*

At its April 10, 2024, meeting, the Plan Commission noted that they were willing to approve the exterior building design as proposed given that the proposed design was intended to match the current building design.

Roofing Materials:

The proposed roofing material is prefinished metal roof panels which are an acceptable roofing material per Sec. A. (1) (c). That section also requires that roof material shall have a Solar Reflective Index (SRI) of 78 or higher on roof slopes less than or equal to 2:12. *The building plans with revision date of 5.10.24 note: “New Roof to Match Existing Roof, 100% of the roof does not meet the solar reflective index requirement.”* The applicant also noted that the proposed roof materials are intended to match the existing roof section, *“to maintain architectural consistency and provide a uniform building roof, exterior building materials consistent with the existing building roof are proposed.”*

At its April 10, 2024, meeting, the Plan Commission noted that they were willing to approve the roofing materials as proposed given that the proposed design was intended to match the current building design.

Loading Docks and Overhead Doors:

The proposed overhead door would be oriented north and south, facing the street and highway respectively. This is consistent with the layout and orientation of the existing building and garage bays. The applicant noted: *“To maintain architectural consistency and provide a uniform overhead door layout, overhead doors are proposed on the north and south sides of the proposed building addition.”*

Per Sec. A. (9), overhead doors shall be designed as follows:

- *Except as provided below, loading docks and overhead doors shall be located in the side yard or rear yard and shall not be located facing a street yard.*
- *Should the building orientation or parcel not provide a suitable accommodation or present an undue hardship for locating loading docks and overhead doors in and/or*

facing the side or rear yard, the Town Board may allow loading docks in and/or facing the street yard if a practical alternative does not exist.

Staff recommend allowing the overhead doors to face the street yards due to the existing building orientation and due to the subject lot having street frontage on both the north and south sides of the lot.

Building Orientation:

Per Sec. A. (12):

- *The Town Board may require building orientation to be adjusted to meet specific site concerns and address aesthetic considerations of nearby properties.*
- *The Town Board may require additional architectural design features on street-facing building facades to mimic the appearance of primary building entrances being located on the street facing side(s) of buildings.*

Exceptions:

Sec. A. (14) states: *“Should a particular parcel present an undue hardship or needs arise to mitigate adjoining land use impacts, the Town Board may modify provisions of these regulations so long as the intent is protected and such modifications are not utilized in significant fashion as to warrant revision.”*

Landscape Design Standards (Attachment E):

The subject property is in the Tier 1 landscape design zone per Attachment D, Architectural and Landscape Design Zones.

The applicant submitted landscape plan which:

1. Appears to adequately address the landscaping required with the 2017 Site Plan Approval
2. Addresses landscaping requirements for the proposed building addition and outdoor display area expansion, as follows:
 - a. **Maximum Impervious Surface:** Proposed post-project impervious surface percentage is 68.7% which is in compliance with the maximum 70% requirement.
 - b. The proposed landscape plan does not appear to conflict with road rights-of-way, or vision corners.
 - c. **Parking Lot Perimeter Landscaping:** Compliant parking lot perimeter landscaping is provided, excluding wetland and utility easement locations.
 - d. **Grounds Landscaping:** Compliant grounds landscaping is provided. An updated landscape plan was submitted (revision date 5.10.24). The revised plan includes some additional Pfitzer Junipers to mitigate the substandard building landscaping provided. The proposed plan exceeds trees requirements by 28 landscape points and exceeds shrub requirements by 30 points.
 - e. **Building Landscaping:** Proposed building landscaping does not comply with code requirements. The applicant provided the following statement on the landscape plan: *“Due to current and proposed building use, this is infeasible but more than required grounds landscaping points provided and landscaping provided on the west side of existing building to compensate.”*

Modifications of Standards:

Sec. F (1) state: *“The Town Board shall have the authority to waive or modify the requirements and standards of this section for good cause shown by the applicant. In lieu of any modification, a substitution of higher standards or inclusion of E3 components described in Attachment F can be required by the Town Board to offset any corresponding waiver or modification.*

Documentation of any modification shall be on file at the Town of Clayton and available for public review.”

Environmental and Energy Efficiency (E³) Guidelines (Attachment F):

The E³ standard is strongly recommended, but not required. Per review of the application materials, the following E³ components are included in this development:

- Storm sewer piping: Only hard piping of stormwater directly off-site is proposed to be directed to the existing regional stormwater pond located north of the subject property.
- Minimize sprawl: Development is proposed within 1/8 mile of existing commercial development.
- Light pollution: Proposed lighting/light pollution is further reduced beyond current ordinance standards.
- Minimize impervious surfaces: Proposed impervious surface percentage is 68.7% which is in compliance with the maximum 70% requirement.

Storage of Waste/Trash and Recyclables (Sec. 9.08-209):

The proposed refuse/recycling area and screening is compliant with code requirements.

Exterior Lighting (Sec. 9.08-210):

Per Sec. 9.08-210(b)(2) all exterior lighting must be certified by the International Dark-Sky Association (IDA) as dark sky compliant. **No documentation has been provided to verify IDA certification.**

Comprehensive Plan Considerations:

- The Future Land Use Map of the Town Comprehensive Plan classifies this parcel as being in the “Business Park” future land use category.
- “Business Park” Future Land Use Category Description:
“Located along the north and south sides of USH 10, between STH 76 and Clayton Avenue, this district contains much of the visible property that fronts the USH 10 corridor. The accessibility and visibility of these lands is attractive to commercial land uses... Planned light industrial uses are also included in the Clayton Business Park North area primarily due to restrictions imposed on uses within the Airport Zoning Overlay. Examples could include warehousing, distribution centers, and light manufacturing...”

New businesses within this area should be regional in nature and require high-levels of access to the USH 10 and I-41 transportation corridors. New development driven solely by USH 10 traffic counts (i.e. car, boat, RV, trailer dealerships, etc.) shall be discouraged. Instead, high-value employment firms with professional offices, medical and dental facilities, and related uses that attract users to and from the Friendship Trail should be considered within this district.”

Please note that per §66.1001 (2m) (b) of Wisconsin Statutes states: *“A conditional use permit that may be issued by a political subdivision does not need to be consistent with the political subdivision’s comprehensive plan.”*

Issues & Outstanding Items, Basis of Decision, & Suggested Conditions:

Issues & Outstanding Items:

1. The proposed new driveway in the eastern portion of property exceeds the 36 ft. maximum width requirement at the juncture with the street pavement.
 - Plan Commission will need to determine if compliance with the driveway width requirements of Attachment B will be required for the proposed driveway or if Plan Commission will recommend allowing the driveway as proposed.

2. Applicant did not provide Winnebago County and Wisconsin Department of Natural Resources (DNR) stormwater management and erosion control permits/approvals.
 - Staff recommends requiring the applicant to provide the Town copies of County and DNR stormwater management and erosion control permits/approvals prior to commencing construction of the proposed building addition.
3. Applicant did not provide Wisconsin Department of Natural Resources (DNR) approval for wetland disturbance/filling.
 - Staff recommends:
 - i. Requiring the applicant to provide the Town a copy of DNR approval for wetland disturbance/filling within six (6) months of Conditional Use Permit and Site Plan approvals; and
 - ii. If the applicant fails provide the Town a copy of DNR approval for wetland disturbance/filling within six (6) months of Conditional Use Permit and Site Plan approvals, all fill shall be removed from the wetland and the wetland shall be restored to preexisting conditions.
4. Documentation of the Solar Reflective Index (SRI) of the proposed roofing materials must be provided.
5. Documentation shall be provided to verify all exterior lighting is IDA (International Dark-Sky Assoc.) certified.
6. New overhead doors are proposed facing street yards (i.e., USH 10 & West American Dr.).
 - Staff recommend allowing the overhead doors to face the street yards due to the existing building orientation and the subject lot having street frontage on both the north and south sides of the lot.
7. Applicant submitted a landscape plan which appears to adequately address the 2017 Site Plan Approval landscaping and adequate landscaping for the proposed building addition and outdoor display area expansion except building landscaping.
 - Plan Commission will need to determine if the augmented (proposed landscaping plan is adequate and may be approved as proposed.

Basis of Decision:

Conditional Use:

The Town, in making its decision, shall consider the following factors:

1. the size of the parcel on which the proposed use will occur;
2. the presence of and compatibility with other uses on the subject property;
3. the location of the proposed use on the subject property (e.g., proximity of the proposed use to other existing or potential land uses);
4. effects of the proposed use on traffic safety and efficiency and pedestrian circulation, both on-site and off-site;
5. the suitability of the subject property for the proposed use;
6. effects of the proposed use on the natural environment;
7. effects of the proposed use on surrounding properties, including operational considerations relating to hours of operation and creation of potential nuisances;
8. effects of the proposed use on the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district and adjoining districts; and
9. any other factor that relates to the purposes of this chapter as set forth in s. 9.01-5 and other sections as may apply.

Site Plan Review:

The Town, in making its decision, shall consider the following factors:

1. Effects of the project on traffic safety and efficiency and pedestrian circulation, both on-site and off-site;
2. Effects of the project on the natural environment;
3. Effects of the project on surrounding properties, including but not limited to operational considerations relating to hours of operation and creation of potential nuisances such as noise, odor, fumes, dust, and light;
4. Compliance with the Special Site Design Principles and Architectural Standards described in Division 8 of Article 8;
5. Compliance with other applicable requirements contained in this Chapter; and
6. Any other factors that relate to the purposes of this Chapter as set forth in section 9.01-05 and other applicable sections.

Suggested Conditions:

The following are possible conditions of approval that may be relevant to ensure compliance with ordinance requirements:

1. The project shall comply with all applicable local, state, and federal codes/ordinances.
2. An up-to-date Site Plan must be on file, at all times, with the Town of Clayton.
3. All activities on the subject property herein shall not in any way become a nuisance by reason of appearance, noise, dust, smoke, illumination, odor or any other similar factor.
4. Subject to the applicant allowing the subject property to be available for inspection by the Town of Clayton officials at any reasonable time and upon reasonable notice.
5. **Winnebago County and Wisconsin Department of Natural Resources permits/approvals for stormwater management and erosion control shall be obtained and copies of such permits/approvals shall be submitted to the Town prior to commencing construction of the building addition.**
6. Wisconsin Department of Natural Resources approval for wetland disturbance/filling shall be obtained and a copy of such approval shall be submitted to the Town within six (6) months of Conditional Use Permit and Site Plan approvals. If the applicant fails to provide the Town a copy of the DNR approval for wetland disturbance/filling within six (6) months of Conditional Use Permit and Site Plan approvals, all illegal fill within the wetland shall be removed and the wetland shall be restored to preexisting conditions prior to the wetland fill violation.
7. Documentation shall be provided that the required wetland restoration activities have been completed per the restoration plan, including fill removal, reseeding, and site stabilization, prior to commencing construction of the proposed building addition.
8. Documentation of the Solar Reflective Index (SRI) of the proposed roofing materials shall be provided, prior to commencing construction of the proposed building addition.
9. Documentation shall be provided to verify all exterior lighting is IDA (International Dark-Sky Assoc.) certified, prior to commencing construction of the proposed building addition.
10. Any future proposed signage shall comply with the applicable requirements of Article 12 and Attachment E of the Town Zoning Ordinance.
11. Any substantial changes and/or additions to the site plan and/or building plans shall be reviewed and approved by the Plan Commission and Town Board in accordance with the Town Zoning Ordinance. Determination of whether a change or addition is substantial shall be at the discretion of the Town Administrator.
12. The location of the refuse/recycling enclosure must be clearly identified on the site plan. All outside store of waste/trash or recyclables shall be located in the side or rear yard and shall be screened from view and enclosed by a fence or wall that extends to the tallest point of waste/trash or recyclable container(s), but not less than six (6) feet in height. Fencing or walls shall meet all applicable design and dimensional requirements of Sec. 9.08-209. The Plan Commission reserves the right to require additional vegetative screening to ensure the enclosure is adequately screened from view.

Staff Comments:

Substantive changes were made to the Kussov comments the Commissioners received for the April 10, 2024, meeting. Staff have outlined those changes/revisions to the best of our ability in a contrasting color, though all may not have been captured.

Also contained in the packet are response emails received from both Dax Connely (Delavan Holdings/Kunes) and Jessica Rodriguez (Excel Engineering). Staff provided Excel Engineering on May 13, 2024, again with the list of outstanding items the Commissioners asked to be addressed prior to taking this matter up again. Mr. Connely responded on June 4, 2024, to the list of outstanding issues the Commissioners requested to be addressed. Ms. Rodriguez responded on June 4, 2024, and provided nonfederal and artificial DNR wetland exemptions.

Staff have reviewed the responses and offer the following comments:

- Applicant has provided a Nonfederal Wetland Exemption Determination the WI DNR
- Applicant has provided a determination response from the US Army Corps of Engineers to Evergreen Consultants, LLC
- Applicant has provided an Artificial Wetland Exemption Determination from the WI DNR
- Applicant **did not** provide the requested specifications identifying compliance with the SRI requirement for roofing material
- Applicant **does not** appear to have explored an alternate location for the location of the garbage/recycling/waste receptacles as requested

At a minimum, Staff would advise the Commissioners determine if any variances would be considered for the following outstanding items:

- Proposed new driveway in eastern portion of property exceeding the 36 ft. maximum width requirement at the juncture with the street pavement
- Allowing applicant to move forward with the proposed roofing material given they did not comply with the Commission's request to provide the requested specifications
- Allowing applicant to move forward with the waste receptacles in the proposed location

These are four of the six outstanding issues the Commissioners requested action be taken on at the April 10, 2024, meeting.

Respectfully Submitted,
Kelsey