

**VILLAGE OF EGG HARBOR PLAN COMMISSION MINUTES**

**TUESDAY OCTOBER 12 – 6:00 P.M.**

**Donald & Carol Kress Pavilion Great Hall 7845 Church Street Egg Harbor, WI 54209**

**<https://villageofegg Harbor.zoom.us/j/84871750995>**

**Call in Number: 312 626 6799 Meeting ID: 848 7175 0995**

Cambria Mueller, Chair  
Kathy Navis, Commissioner  
Emily Pitchford, Commissioner  
Jon Kolb, Commissioner

Paula Cashin, Commissioner  
Lou Nyberg, Commissioner  
Chris Roedl, Commissioner

Agenda:

1. Call Meeting to Order
  - a. **Chair Cambria Mueller called the meeting to order at 6:24 PM.**
  - b. Commission members present: Cambria Mueller, Paula Cashin, Jon Kolb, Kathy Navis, Lou Nyberg, Emily Pitchford, Chris Roedl.
  - c. Absent: None.
  - d. Staff present: Megan Sawyer, Jim Kalny, Village Council, Tom Strong
  - e. Audience members: Peter Gentry, Double Barrel Brewing, Jennifer Gentry, Double Barrel Brewing, David Phillips, Bayland, MaryJo Kolb, Kaaren Northrop, Kevin Egan, Myles Dannhausen Jr, Luke Bentley, Laurie Culp, Lisa Van Laanen, Paul Brophy, Alyssa Rassmusson.
2. Approve Agenda
  - a. **Cambria Mueller moves to approve the agenda.**
  - b. **Kathy Navis second.**
  - c. **Motion unanimously carried.**
3. Pledge of Allegiance
4. Approval of September 28, 2021, Plan Commission Public Hearing Minutes
  - a. Changes: Commission members recommended several changes.
  - b. **Cambria Mueller moves to approve the September 28, 2021, Plan Commission meeting minutes as amended.**
  - c. **Kathy Navis second.**
  - d. **Motion unanimously carried.**
5. Open Session
  - a. Chairperson Mueller opened the floor for public comment.
  - b. *Kathy Navis: Has Jim Kalny come back with any determination on the accessory building*

*being an addition to the property, and therefore changing the parking requirements?*

- c. *Megan Sawyer: Jim Kalny provided his memo. He will walk you through his memo during deliberation.*

6. Deliberation, consideration, and possible action on Special Development District Relief Application filed by Peter Gentry on behalf of Double Barrel Brewing Co LLC for 4633 Market Street (Parcel # 1180125302612E)
- a. *Jim Kalny presented an overview of his Memo regarding the Double Barrel Brewing Co LLC for 4633 Market Street (Parcel # 1180125302612E) Special Development District relief application as presented in the packet. We will be talking tonight about what is the extension of a non-conforming use. One Barrel has an established business under their existing Conditional Use Permit. They are an existing, functioning non-conforming use. The Conditional Use Permit doesn't address an accessory structure. An accessory structure is permitted by village code. Since the CUP was approved, the Village amended the parking provisions of the zoning code, which is what rendered One Barrel non-conforming. The important language in the non-conforming use statute is that nonconforming uses may not be extended. The question we have to address is if the addition of an accessory structure is an extension of the use of the property. My first reaction was that yes, you are expanding the business. If you look at the prior memos, the determination of what constitutes an extension of a non-conforming use has been complicated by case law. The leading case in this area is Waukesha County v. Seitz, 140 Wis.2d 111 409 N.W.2d 403 involved a resort that included a marina. The enactment of shoreline zoning ordinances rendered the marina a nonconforming use. The owner of the marina (Seitz) constructed new piers to accommodate the increased demand the business was experiencing. Seitz expanded the dry-docking facility from three to five boats to fifty-four boats. Later the Seitz expanded his pier from the length of 80 feet to 120 feet. Still later Seitz again extended his pier to the current length of 192 feet. The Seitz court began its analysis by recognizing that the spirit of zoning is to restrict a nonconforming use and to eliminate such uses as quickly as possible. The court however also noted that Seitz's active use of the marina facility gave him a vested interest in his marina and resort activity. One Barrel has a similar existing use that gives them a vested interest. Once a property owner has acquired a proprietary or "vested" interest in the use, the use will be protected from subsequent zoning elimination. The court ultimately held: If an increase in volume, intensity or frequency of use is coupled with some element of identifiable change or extension, the enlargement will invalidate a legal nonconforming use. However, a mere increase in the volume, intensity or frequency of a nonconforming use is not sufficient to invalidate it. The Court reasoned that the increase in intensity and use is attributed to nothing more than the increased recreational use on the lake. There was no identifiable change in the use. As we have previously said, "if there is an identifiable change in the [legal nonconforming] use, the enlargement is illegal. If the expansion is a result of a mere increase in the historically allowed use, the enlargement or expansion will be allowed subject to regulatory markers." Legal nonconforming uses are protected because of concerns that retroactive application of zoning ordinances would be unconstitutional. Wisconsin law "protects the expansion of a legal nonconforming use as long as the essential character of the use is not identifiably changed. That is not to say there are no limitations on extension of a non-conforming use. The addition of real estate to an existing non-conforming use has been held to be an illegal extension. Substituting new mobile homes in a park for older models was found to be an illegal renovation subject to the 50% rule. In Seitz II, when Seitz attempted to add a grocery store to the resort use the*

*Court nixed that idea stating that the addition of the store changed the character of the use. I have not been able to find case law directly addressing the issue of a newly constructed accessory building, however, applying the rules set out above, One Barrel has represented that the accessory structure is needed to keep up with the continued success of the business. The new storage area will not change the essential character of the use and there are no regulatory markers prohibiting the expanse (as the accessory structure is otherwise permitted in this zone). Based on the foregoing, I conclude the accessory structure is not an illegal extension of the One Barrel nonconforming use as a brewery and restaurant. Whether to grant the special district exception may be considered by the Commission as it would any other such exception. Based on the foregoing, I conclude the accessory structure is not an illegal extension of the One Barrel nonconforming use as a brewery and restaurant. Whether to grant the special district exception may be considered by the Commission as it would any other such exception.*

- b. Cambria Mueller: Thank you Jim. Do any of the commissioners have any questions?*
- c. Jon Kolb: Does it change anything in the future if it changes from a storage facility to barn dance area or a place where entertainment would be held?*
- d. Jim Kalny: That could cause a problem. Right now, it is purely accessory. I would argue that a barn dance area is a change of use. They cannot change the nature of the use.*
- e. Cambria Mueller: In deliberation for the Special Development District, we aren't talking about the building. We are talking about the setbacks. How do we ensure that the structure will be used for the original purpose? Where is that governed?*
- f. Jim Kalny: If he isn't using it for storage and brewery purposes, he is taking a risk. That is a problem that could effectively revoke the non-conforming use. He will have to make sure the use is consistent with the restaurant and brewery use. That is one of the factors the court repeatedly sights.*
- g. Cambria Mueller: So, there isn't anything more that the Plan Commission would need to do, because that is stated in the Conditional Use Permit that was granted a few years ago?*
- h. Jim Kalny: Yes, that is a logical way to look at it.*
- i. Lou Nyberg: If we do give the setback relief, we have essentially approved the building?*
- j. Cambria Mueller: He wouldn't have to come to the Plan Commission to build the building. He wants to put in parking because he knows it is a problem in the Village. He is coming to us today for setback relief. If we deny the request for setback relief, he could still build the building with just a zoning permit approval from the office as long as that accessory structure meets zoning code.*
- k. Kathy Navis: Jim, under the court case sighted, "Wisconsin Law protects the expansion of a legal nonconforming use as long as the essential character of the use is not identifiably changed." Does that mean they could add a grocery store? You could expand the legal non-conforming use? Does that mean you can expand the building?*
- l. Jim Kalny: You could not add a grocery store. Extend is the term they use. Yes, it appears they can extend the use under the precedent that I'm sighting. I was surprised to find that language. It appears they can extend that use as long as it is necessary to continue the vested use.*
- m. Cambria Mueller: In Conditional Use Permits, do we now have to start capping square footage to trigger a new Conditional Use Permit if someone wants to expand?*
- n. Jim Kalny: If you actually set the size of the building as a condition, and they build beyond that size, they are in violation of the permit. That is a different issue. I think that is a good idea to do that. You can say "We are approving this specific plan". I think that is how you want to set it up.*
- o. Cambria Mueller: Any business that had to get a Conditional Use Permit, it sounds like they could add on or extend their business and not have to come back. I thought if you were*

- adding on that automatically triggered a new CUP approval. It doesn't sound like it does.
- p. *Emily Pitchford: Is this different because this is an accessory structure?*
- q. *Jim Kalny: The fact that it is an accessory structure makes it easier to swallow. It is an accessory that is extending the existing use. There hasn't been a substantial change in the use.*
- r. *Emily Pitchford: You want to put a cap on the building that is allowed under Conditional Use Permit. There can always be an accessory building that is allowed if it fits the ordinance. I don't know how you would cap that.*
- s. *Cambria Mueller: Maybe in a Conditional Use Permit, we could say for example say the building can't exceed 1,800 square feet or any accessory structures need to come back to the plan commission. I was thinking more about future application.*
- t. *Emily Pitchford: For Village View Condos, we specified that if the plans change, they need to come back to the Plan Commission for approval.*
- u. *Megan Sawyer: Jim, is this as simple as when we go to deliberations, any changes to the site plans need to come back to the commission prior to construction?*
- v. *Jim Kalny: Yes, that sounds right. You allow a use, provided the applicant meets some conditions. For example, it is reasonable to say they will have to submit a storm water drainage plan before they begin construction. I don't see why we can't say you are approving this plan and any changes need to come back for approval.*
- w. *Emily Pitchford: Can you specify that this building can only be used for storage?*
- x. *Jim Kalny: It has to be a continuation of the existing business. It has to be related to the volume and intensity of the current use.*
- y. *Jon Kolb: I'm not happy with the word volume and intensity. We have so many people in the yard now. Would they be able to allow customers to use that building if it is raining? That would potentially increase the footprint for standing area.*
- z. *Jim Kalny: That is an interesting question. That is arguably an increase in intensity. It is different from the reason that he is asking for the special exception. He is asking for it for storage. I think we are in good shape to hold him to the purpose he has presented.*
- aa. *Lou Nyberg: I see the note where it is stated that this building is needed for the continued success of the business. I don't see where storing picnic tables is essential to the success of this business. Seasonal storage can be done anywhere.*
- bb. *Kathy Navis: He said the main reason is to store beer in the summer. He will be getting larger deliveries of beer, cups, and paper products. It wasn't just for winter storage.*
- cc. *Peter Gentry: The building will be climate controlled at 55 degrees in the summer for beer storage.*
- dd. *Jim Kalny: That ties in nicely with the increase in volume and intensity. I think it is reasonable to recognize it as one of the reasons for granting this relief.*
- ee. *Kathy Navis: Would it make sense for us to have a condition to limit the use of what items can be stored in the accessory building?*
- ff. *Jim Kalny: This isn't a conditional use, but I think you can grant the construction of the structure based on the understanding that was represented at this meeting. We are being told what it is going to be used for. I think if you just say you will approve it subject to what is being represented, I think you are in pretty good shape.*
- gg. *Jon Kolb: What scares me is the original CUP was approved at 190 people with 37 parking spots. We approved it under those conditions but now we can't enforce those limits. Why do we think we can enforce the use of this storage building when we can't enforce the original limits?*
- hh. *Jim Kalny: The problem is we didn't really have a nailed down size. We left it open for him to come back with plans that were later approved. I don't know that we really granted it with a concept of what the actual parking would be.*

- ii. *Kathy Navis: I don't think we listed in the conditions either the number of seats or the number of parking spot.*
- jj. *Jon Kolb: On July 24, 2018, from the minutes, "Kolb confirmed there will be 35 parking spots. Navis clarified that Gentry will be adding 20 parking spaces to the current parking lot". The evidence was provided by the applicant, that 35 parking spots would be added as designated on the site plan. I want to make sure that when we put something in now, we make it concrete. When I look back at the minutes, I see concrete statements. How confident am I going to be now?*
- kk. *Kathy Navis: These limits weren't in the conditions. That is the problem.*
- ll. *Cambria Mueller: Everything that we are talking about, Megan is adding it to the Findings of Fact and Conclusions of Law document. That is the basis for it standing up. For the original One Barrel approval, it was talked about, but it wasn't listed as a condition. That is why it is important that we put everything into the final document.*
- mm. *Jon Kolb: I thought when I was looking at the 2018 minutes, it was under the Finding of Facts.*
- nn. *Megan Sawyer: It was in the findings of fact and conclusions of Law in 2018. What Kathy and Cambria are saying is that we didn't add a specific condition in terms of parking spaces. To address your concerns tonight, we have the approval contingent that any changes need to come back to the plan commission for review and approval. Jim, is that an appropriate way to address the possible change of use?*
- oo. *Jim Kalny: Yes, that is the best option, to say we are granting this subject to the understanding that if you change the use to something that is not a continuation of the current use, then it has to come back to be reviewed.*
- pp. *Jon Kolb: Maybe at some point we can sit down and walk through the minutes from those 2018 meetings. When I look under the findings of fact, I thought that was a part of the testimony.*
- qq. *Cambria Mueller: Just because it was testimony, doesn't mean it translated into conditions. Do any commission members have any questions or concerns regarding the parking lot setbacks?*
- rr. *Lou Nyberg: Can someone confirm how many seats One Barrel has? There seems to be some confusion about what that number is. How many parking spaces would that require?*
- ss. *Megan Sawyer: From the 2021 Utility Committee count, they have 88 indoor seats, 328 outside seats for a total of 416 spots. This would translate to 104 required parking spots.*
- tt. *Lou Nyberg: The reason I ask is we are up to 47 parking spots. We are keyed in on parking and have been meeting about parking for a long time. We are going to accept a rather large building in an area that could provide additional parking. He would need 104 parking spots, but he is only putting in 47. That puts him pretty close to the top of the list in the Village for the number of required parking spaces. I don't know if there is any way that we could squeeze more parking in or reduce the size of the building to get more parking.*
- uu. *Chris Roedl: Is there an opportunity to limit the extension of use? Are we enabling this to grow farther by allowing the storage building? Are we enabling him to go from 416 seats to 500 seats? We talk about intent quite a bit. I don't think your intent when you approved the initial CUP was to approve 416 seats. Is there a way to get your intent on record here?*
- vv. *Kathy Navis: We don't have conditions that we can put on from my understanding. I don't disagree with you, but I don't know that we have that capability. When this project happened, we had the 500-foot rule for allowing on street parking.*
- ww. *Cambria Mueller: I agree with you, but I would ask Jim Kalny, is there anything we can do in this meeting to ensure that intent of the structure, size and use is followed?*
- xx. *Jim Kalny: Yes, for the structure, size, and use. We are approving the setback with the understanding that it will be used for storage, consistent with the need for increased volume*

*and intensity.*

- yy. *Kathy Navis: There is no ability to limit the number of seats in this discussion?*
- zz. *Jim Kalny: I'm not sure how you would get there. I supposed you could just deny, but that isn't the standard you normally follow in reviewing.*
- aaa. *Chris Roedl: I am in favor of this project moving forward because we need the parking on that site. I think it would be a neighborly agreement to not extend the use any more than it already has. We need parking. I feel like the applicant heard our concerns at the last meeting and added more parking spaces. I am in favor of it.*
- bbb. *Cambria Mueller: I applaud that Peter and Bayland has found a way to add more parking after our last meeting even though it was not a requirement. It is appreciated that you took that step on your own to get more parking in. Thank you for that. We have had a rocky start. Moving forward, if the Village is going to be doing something, we will let you know. If you are going to be doing something, please let us know. It isn't that we are out for any business in the Village. Trying to contain the happenings and growth in the Village is difficult right now. It is a balancing act.*
- ccc. *Jon Kolb: Can we propose that this SDD approval be contingent on the storage building foundation and the additional parking spaces be completed, paved, and striped, prior to the upward construction of the storage building itself? I am asking because we have history here that we were promised a parking lot that we didn't get. I want to be sure that we get the parking lot before the structure goes up, so it doesn't come back to the funds aren't available.*
- ddd. *Kathy Navis: I would think this structure needs an occupancy permit? I would think the structure can not be occupied until they complete the construction and obtain that permit. He would not be able to store anything in this structure until then.*
- eee. *Jim Kalny: That is true.*
- fff. *Jon Kolb: Could we very clearly state that this time that the building cannot be used until the parking lot is paved and striped? I don't want to get burned twice. I want to be sure we get the parking lot, then permit the building.*
- ggg. *Paula Cashin: I like that idea.*
- hhh. *Megan Sawyer presented the DRAFT Findings of Fact and Conclusions of Law document. The commission members provided input to define the conclusions and complete the document. See Appendix A for the document the commission voted on. Megan Sawyer will complete the final version with Jim Kalny then provide it to Commission members prior for final approval and signatures.*
- iii. Kathy Navis moves to approve the Special Development District Relief Application filed by Peter Gentry on behalf of Double Barrel Brewing Co LLC for 4633 Market Street (Parcel # 1180125302612E) including the Findings of Fact and Conclusions of Law as presented by Zoning Administrator Megan Sawyer, and the contingencies proposed.**
- jjj. Cambria Mueller second.**
- kkk. *Megan Sawyer: We will need to add with the incorporation of the five criteria as outlined in the staff report.*
- lll. *Jim Kalny: We are going to put that right in the Conclusions of Law and we are adopting the Conclusions of Law. We are ok with that as is.*
- mmm. *Jon Kolb: Do we need to call out the fact that the building can not be occupied after July 1<sup>st</sup> until the criteria are met? I don't want to get to July 1<sup>st</sup> to find out we weren't specific enough*
- nnn. *Megan Sawyer: I thought the decision was that he can use the building with the parking lot still gravel until July 1st.*
- ooo. *Kathy Navis: Right but Jon is asking what happens on July 1<sup>st</sup> if the parking lot is still*

*gravel, what is the remedy?*

*ppp. Megan Sawyer: As Jim indicated, he would be in violation of his Special Development District relief permit. He would have to come back to this Plan Commission.*

*qqq. Jon Kolb: My question to Jim then is if that gives us the authority to ask him to evacuate the building until the black top is completed?*

*rrr. Jim Kalny: If you are going to impose that, you should impose that as a condition now.*

*sss. Jon Kolb: I think we want to impose that as a condition. I don't want to see a gravel parking lot all summer just because they aren't able to complete it by July 1<sup>st</sup>. The impetus is to get it black topped as soon as possible. I think we need to spell that out.*

*ttt. Jim Kalny: The problem we run into there is one he is allowed to build that structure, there is a vesting in that use. We might have a problem telling him he can't use it after we allowed him to build it. We are kind of working ourselves into a corner there.*

*uuu. Peter Genty: I have a reputable builder. Dave was saying they will get on a list tomorrow for paving next summer. He doesn't see any problem meeting the July 1<sup>st</sup> deadline.*

*vvv. Jim Kalny: You can add a notice provision that if they can't complete it by July 1<sup>st</sup>, notice shall be given to the Plan Commission, so they have to come back to explain it. The only enforcement you have for Conditional Uses is to take them to court.*

*www. Cambria Mueller: There is a motion on the table and a second. Is there any additional discussion?*

*xxx. Jon Kolb: Everyone else is ok with the July 1<sup>st</sup> deadline? It seems that the best option we have is to not grant use of the building until the black top is completed.*

*yyy. Kathy Navis: I don't think that is reasonable. If they have the building up this fall, they will want to use it.*

*zzz. Several commission members commented that they are ok with it as is.*

*aaaa. Jon Kolb: Ok. I just want to remind everyone that this is a gravel parking lot right now that was approved in 2018 to be black topped.*

*bbbb. Cambria Mueller: There is a motion and a second. Are there any additional discussion? Hearing none, let's take the vote on this motion.*

**cccc. Motion unanimously carried.**

*dddd. Cambria Mueller: Thank you Peter for bearing with us as we go through our due diligence.*

## 7. Correspondence

- a. Cambria Mueller opened the floor to any comments regarding the correspondence.
- b. *Megan Sawyer: We received one correspondence since the last meeting.*
- c. *No Commission member comments regarding correspondence.*

## 8. Open Session

- a. *Cambria Mueller opened the floor for public comment.*
- b. *Luke Bentley: It was really nice to see the Plan Commission work through this request. I feel that you handled the request appropriately. Thank you for your work on this.*

## 9. Next Meeting

- a. October 13, 2021, 6:00 PM for Shipwrecked
- b. Regular Meeting: October 26, 2021, 6:00 PM.

10. Adjourn

- a. **Cambria Mueller moved to adjourn.**
- b. **Kathy Navis second.**
- c. **Motion unanimously carried.**
- d. Meeting adjourned at 8:00 PM.

Minutes completed by Tom Strong on October 18, 2021. Submitted for approval on October 26, 2021.

**Bold – Commission Action**

*Italics – Summarized Comments*



**Appendix A: DRAFT Gentry 4633 Market SDD Relief Findings of Fact**

**VILLAGE OF EGG HAROBR PLAN COMMISSION**

**Special Development District Relief Application**

**Of**

**Double Barrel Brewing Co. (One Barrel Brewing)**

**Findings of Fact and Conclusions of Law**

This matter originally came before the Plan Commission for a public hearing on September 13<sup>th</sup>, 2021, and returned with a revised plan on October 12<sup>th</sup>, 2021; on an application for special development district relief filed by Peter Gentry on behalf of Double Barrel Brewing Co., of 6140 N Shoreside Circle, Sturgeon Bay, WI 54235 (the “Applicant”). The purpose of the hearings was to determine whether special development district relief should be granted to the Applicant;

**Findings of Fact**

1. An application for special development district relief was filed by the Applicant with the Village on July 1<sup>st</sup>, 2021 (the “Application”) for property located at 4633 Market Street Egg Harbor, WI 54209 (the “Property”). Said application as filed on July 1<sup>st</sup>, 2021, is required per section § 152.030 (A) Off Street Parking; Driveways which requires a 75-foot front yard setback from the centerline of the roadway and 10-foot rear yard setback for parking lots within the C-1 Zoning District and section § 152.028(A)(3) Commercial District setback restrictions which requires a 10-foot side yard setback for structures in the C-1 Zoning District. The Special Development District Relief Application and associated project plans are incorporated as Attachment A.
2. A public hearing held on September 13<sup>th</sup>, 2021, regarding the application was duly noticed and published as a Class 1 Notice under Chapter 985, Wis. Stats., which notice was published in the Peninsula Pulse on September 3<sup>rd</sup>, 2021.
3. The Property is currently zoned C-1 with a special development district overlay under and pursuant to section § 152.025 and section § 152.026 of the Village of Egg Harbor Municipal Code.
4. At the September 13<sup>th</sup>, 2021, public hearing, testimony under oath was provided by Megan Sawyer, Village Administrator, on behalf of the Village that for the project to obtain Village approval, Special Development District Relief under the provisions of section § 152.026, et. Of the Code would be required. Ms. Sawyer’s staff report was reviewed and made part of the record. The staff report is incorporated as Attachment B.
5. At the September 13<sup>th</sup>, 2021, public hearing, testimony under oath was provided by Peter Gentry on behalf of the applicant. Gentry testified and provided an overview of the project plans, which include increasing the number of parking spaces onsite. Gentry testified that relief is being sought for setback requirements to add parking and an outbuilding. Gentry testified and asked that the Plan Commission consider the project on its merits and recommendations from Village staff. Gentry testified that he would like to get the extra parking in place.

6. At the September 13<sup>th</sup>, 2021, public hearing, testimony under oath was provided by Dave Phillips with Bayland Buildings, on behalf of the applicant. Phillips testified and provided additional details about the project. Phillips testified that four or five different site layouts were drawn up for the project to see how the onsite parking could be maximized. Phillips testified that he believes the best layout and design has been presented. Phillips testified that the site is not an easy site to work with and the size of the building was reduced to keep as much parking as possible. Phillips testified that the new outbuilding was designed to match the existing buildings on the property Phillips testified that the impervious surface ratio for the property with the proposed project will be 53.69% which is under the 60% maximum. Commissioner Kolb asked about an existing structure on the property, and Gentry testified that the existing plastic storage shed will be removed.
7. At the September 13<sup>th</sup>, 2021, public hearing additional testimony under oath was provided by members of the public.
  - a. Dawn McGinnis testified that she has seen people bring their own chairs into the establishment, which makes the number of seats irrelevant. McGinnis testified that she was able to hear the band and crowd noise from the property at her home. McGinnis testified that it is a shame Main Street Market has to police their own parking and she hopes this is taken into consideration.
  - b. Dave Callsen testified that on Labor Day weekend, his business had many customers that expressed complaints that the business' parking lot was not able to handle the business traffic. Callsen testified that by the number of people actually at his establishment it was clear the parking lot was being utilized by patrons of One Barrel. Callsen testified that a number of his employees policed the parking lot with and without cooperation from those parking. Callsen testified that One Barrel creates a serious burden on Main Street Market. Callsen testified that his concern is that the storage building will be located in a spot that is not ideal and could be used for parking. Callsen testified that he believes there could be some adjustments made to the plans to provide more parking. Callsen testified asking the Plan Commission to require more parking.
  - c. Kaaren Northrop testified that she is not sure if the new configuration addresses delivery trucks needing to pull into the Main Street Market parking lot to back into the One Barrel parking lot. In response to this, Chair Cambria Mueller asked Peter Gentry to clarify how the deliveries will be made with the new parking lot. Gentry responded that he has requested delivery trucks do not go into the Main Street Market parking lot and with the additional storage building, there should no longer be large semi-trucks delivering, just short trucks that are 40 ft.
  - d. Commissioner Paula Cashin asked Gentry what he will be storing in the storage building. Gentry responded that he will be using the storage building for storing beer, cups, supplies in the summer, and tables in the winter.
  - e. Commissioner Paula Cashin asked why the storage building is not built into the hill or is not downsized more. Dave Phillips responded that both of these options were looked at but neither option provided a total number of parking spots that was much different.
  - f. Commissioner Chris Roedl asked Gentry if the storage building is needed for him to operate the business and Gentry responded that it is.
  - g. The Commission discussed other configurations of the project with the applicant.

8. In response to testimony provided at the September 13<sup>th</sup>, 2021, public hearing, the applicant provided updated plans to the Village Plan Commission at the September 28<sup>th</sup>, 2021, Plan Commission meeting. Along with the updated plans, the applicant amended the special development district relief application to also include relief from section § 152.030 (A) Off Street Parking; Driveways which requires a 10-foot side yard setback. The amended special development district relief application and project plans are incorporated as Attachment C.
9. In order to review the updated plans, at the September 28<sup>th</sup>, 2021, Plan Commission meeting, the Plan Commission passed a motion to schedule a public hearing for October 12<sup>th</sup>, 2021.
10. A public hearing held on October 12<sup>th</sup>, 2021, regarding the application was duly noticed and published as a Class 1 Notice under Chapter 985, Wis. Stats., which notice was published in the Peninsula Pulse on October 1<sup>st</sup>, 2021.
11. At the October 12<sup>th</sup>, 2021, public hearing, testimony under oath was provided by Megan Sawyer, Village Administrator, on behalf of the Village that for the project to obtain Village approval, Special Development District Relief under the provisions of section § 152.026, et. Of the Code would be required. Ms. Sawyer's staff report was reviewed and made part of the record. The staff report is incorporated as Attachment D.
12. At the October 12<sup>th</sup>, 2021, public hearing, testimony under oath was provided by? on behalf of the applicant. Insert applicant testimony.
13. At the October 12<sup>th</sup>, 2021, public hearing, testimony under oath was provided by additional testimony under oath was provided by members of the public.
  - a. Insert public testimony.
14. The Plan Commission reviewed the application against the following criteria as stated in section 152.026(F) of the EHCO:
  - a. The proposed project is consistent with the spirit and intent of these regulations and will produce significant benefits in terms of improved design sufficient to justify the application of the Special Development District concept instead of conventional zoning restraints.
  - b. The character of the project is compatible with existing development in the surrounding area and with the Comprehensive Master Plan.
  - c. The project can be provided with municipal services.
  - d. The project's proposed design provides adequately for practical operation and maintenance based on actual functional need in terms of circulation, parking, emergency services, delivery services, snow plowing and garbage and refuse collection.
  - e. Any other factors which, in the discretion of the Village Plan Commission, are necessary to protect the public health, safety, and welfare of the area of community.

### **Conclusions of Law**

Based upon the foregoing evidence presented, the Egg Harbor Plan Commission makes the following Conclusions:

1. The Plan Commission has proper jurisdiction to hear this matter.
2. Due notice was properly given to all parties and public of the Public Hearing was duly and properly made.
3. The proposed project requires a special development district relief as provided in section § 152.026 EHCO.
4. The record in this matter contains substantial evidence that the application and all requirements and contingencies established by the Village relating to the special development district relief are or shall be satisfied.
15. The Plan Commission has reviewed the application against the criteria as stated in section 152.026(F) of the EHCO and concludes the following:
  - a. The proposed project is consistent with the spirit and intent of these regulations and will produce significant benefits in terms of improved design sufficient to justify the application of the SDD concept instead of conventional zoning restraints: Conclusion: The proposed project including relief from the section 152.030 (A) Off Street parking; Driveways which requires a 75-foot front yard setback from the centerline of the roadway and a 10- foot side and rear yard setback for parking lots within the C-1 Zoning District and section 152.028(a)(3) Commercial District setback restrictions which requires a 10- foot side yard setback for structures in the C-1 Zoning district is consistent with the above criteria.

Based on foregoing Findings, the Plan Commission determines that the SDD relief be granted contingent on the following factors:

- To ensure compliance with the intent of the special exception any change of use of the accessory structure from use only for storage is subject to prior review and approval by the Plan Commission.
- Due to concerns with parking and congestion in the area any further increase in intensity and use shall be subject to review by the Plan Commission.
- Any changes to the site plan including a total of 47 parking spaces and including the size of the accessory structure as presented in Attachment C as submitted on September 28<sup>th</sup>, 2021, shall be subject to review and approval by the Plan Commission.
- Any changes to accessory structure design as presented in the project plans incorporated as Attachment A be reviewed and approved by the Plan Commission.
- Final storm water plans shall be reviewed and approved by the Village Engineer prior to the issuance of a Village Zoning permit.
- The parking lot be paved and striped by July 1<sup>st</sup>, 2022.
- The existing dumpster enclosure remains as is.
- Signage indicating parking areas be added to the property in compliance with Chapter 155 Sign Regulations.