

Date: March 4, 2021

To: Village of East Troy Plan Commission

From: Tim Schwecke, AICP, Zoning Administrator

Subject: Conditional use for golf simulator classified as indoor recreation along with a tavern for sale of canned and bottled beverages for property located at 2541 Main Street, Unit B and C (RA139600001); Brian Pluess and Jinnesa Pluess, applicant

Application: 2021-02; <https://s.zoninghub.com/7VFDTWW33P>

Meeting: March 8, 2021 Plan Commission meeting

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Brian and Jinnesa Pluess are proposing a new business at 2541 Main Street, Unit B and C, consisting of golf simulators and a tavern for the sale of canned and bottled beverages.

### Subject Property



**Zoning classification** Highway Business (HB)

**Description** The zoning code describes indoor commercial entertainment as follows:

Indoor commercial entertainment land uses include all land uses which provide entertainment services entirely within an enclosed building. Such activities often have operating hours that extend significantly later than most other commercial land uses. Examples of such land uses include restaurants, taverns, theaters, bowling alleys, arcades, roller rinks, pool halls, and fitness studios and instructional studios (e.g., dance, art, martial arts) where the occupancy load is more than 25 people.

**Development standards** The zoning code establishes two specific standards for this use as follows:

1. If located on the same side of the building as abutting residentially zoned property, no customer entrance of any kind shall be permitted within 150 feet, or as far as possible, of a residentially zoned property.
2. Facility shall provide bufferyard with minimum opacity of 0.60 along all borders of the property abutting residentially zoned property (see Article K).

The proposed project complies with these requirements.

**Guidance regarding 2017 Act 67** With the adoption of 2017 Act 67, the State of Wisconsin has preempted municipal authority regarding conditional use permits in a number of respects, effective November 29, 2017. Decisions concerning conditional use permits now must be based upon "substantial evidence," which is defined as follows:

"Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion."

Note two additional requirements of the new law:

1. Any condition imposed must relate to the purpose of the ordinance and be based on substantial evidence.
2. If an applicant for a conditional use permit meets or agrees to meet all requirements and conditions specified in the ordinance, the conditional use permit must be granted.

The applicant must present substantial evidence demonstrating that the application and all requirements and conditions established by the Village relating to the conditional use are or shall be satisfied. Any condition imposed by the Village through ordinance or by the Village Board must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer or renewal. The Village's decision to approve or deny the application must be supported by substantial evidence.

**Review procedures** The Plan Commission conducts the public hearing and acts in an advisory role to the Village Board which makes the final decision. Following the close of the public hearing, the Plan Commission may recommend (1) approval, (2) approval with conditions, or (3) denial. If approval is recommended, the Plan Commission can recommend conditions deemed necessary to protect the public health, safety, and welfare.

**Required findings** As required by the Section 510-157(H) of zoning code, a number of findings must be made. They are listed in the conditional use order beginning on the first page and below for your convenience. A motion recommending approval should make reference to these.

1. The proposed conditional use (the use in general, independent of its location) is in harmony with the purposes, goals, objectives, policies and standards of the comprehensive plan, the zoning code, and any other plan, program, or ordinance adopted, or under consideration pursuant to official notice by the Village.
2. The proposed conditional use (in its specific location) is in harmony with the purposes, goals, objectives, policies and standards of the comprehensive plan, the zoning code, and any other plan, program, or ordinance adopted, or under consideration pursuant to official notice by the Village.
3. The proposed conditional use, in its proposed location and as depicted on the required site plan does not result in a substantial or undue adverse impact on nearby property, the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the provisions of the zoning code, the comprehensive plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the Village or other governmental agency having jurisdiction to guide development.

4. The proposed conditional use would maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property.
5. The proposed conditional use is located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by public agencies serving the subject property.
6. The potential public benefits of the proposed conditional use outweigh any and all potential adverse impacts of the proposed conditional use after taking into consideration the applicant's proposal and any requirements recommended by the applicant to ameliorate such impacts.

**Public notice** Public notice for the public hearing was published in the *East Troy Times* on February 19 and 26, 2021 (attached). In addition, the public hearing notice was mailed to all property owners within 300 feet of the subject property, although not specifically required by the zoning code.

**Comments received** No written comments have been submitted to the Village as of this date.

**Draft conditional use order** A copy of the proposed conditional use order is attached. It is based on the Village's standard template.

**Proposed motion:** Recommend to the Village Board the approval of the conditional use subject to the terms in the draft conditional use order dated March 3, 2021

**Attachments:**

1. Public hearing notice
2. Draft conditional use order, dated March 3, 2021
3. Application materials