

#### ZONING BOARD OF APPEALS AGENDA

#### Tuesday, June 16, 2020 5:00PM

- 1) Call to Order
- 2) Roll Call
- 3) Pledge of Allegiance
- 4) Approve Minutes
  - a. May 13, 2020
- 5) Public Participation (Non-Agenda Harrison Related Items)
- Convene Meeting and Enter Public Hearing

   Variance BelGioioso Cheese Inc. N8495 Hwy 55
- 7) Close Public Hearing and Reconvene Regular Meeting
- 8) Items for Discussion and Possible Action
  - a. Variance BelGioioso Cheese Inc. N8495 Hwy 55
- 9) Adjourn

Any person with hearing disabilities or requiring special accommodations to participate in the meeting should contact the Clerk's Office (920-989-1062) at least 24-hours prior to the meeting. This is a public meeting. As such, a quorum of the Village Board, Plan Commission, or Committees may be in attendance. However, the only business to be conducted is for the Zoning Board of Appeals.

Posted: June 4, 2020



#### Zoning Board of Appeals Minutes May 13, 2020

- 1) Call to Order: Meeting was called to order at 5:00pm.
- Site Inspections: Viewed the following properties:
   a. Variance BelGioioso Cheese N8495 Hwy 55.
- 3) Roll Call: Present: Craig Majewski, John Jung, Tom Capper, Scott Chicoine, 1 seat vacant. Staff present: Mark Mommaerts, AICP (Planner).
- 4) Return to Municipal Building: Returned to Municipal Building from site inspections at 5:17pm.
- 5) Pledge of Allegiance: Pledge was recited.
- 6) Approve Minutes: Motion (Jung/Majewski) to approve the October 1, 2019 minutes. Motion carried unanimously.
- 7) Public participation: There was no public comment.
- 8) Convene Meeting and Enter Public Hearing: The Public Hearing was opened at 5:30pm. The following petitions were heard:
  - a. Variance BelGioioso Cheese N8495 Hwy 55. The hearing notice was read into the record. Testimony was taken from Amy Beland, BelGioioso Cheese (Petitioner), Dave Schmidt, BelGioioso Cheese, and Jay McKeefry, Schuh Construction who spoke in favor of the variance request. Beland stated that in order to maintain plant viability, without this expansion the plant may shut down. The basis of the height is due to the height of the equipment needed. BelGioioso is exploring options to bring the height down to approximately 100-feet. The 10-foot setback is in line with the setback on existing portions of the plant. Schmidt stated the spray dryer is 110-feet tall and stated technical language about the process of atomizing water droplets under pressure to evaporate and start drying the material. A slight odor from the process occurs, similar to the baking process. The dryer will run 24/7 for 4 days a week. The 100-foot option is still under review by the company. The delivery time for the dryer is 12-18 months. McKeefry stated the exterior material on the bottom 34-feet is EFIS and the upper portion is metal panels. The building will be designed to meet all state building codes. Beland stated the dryer placement on the site is

limited due to the layout of the existing building. Schmidt stated that there may be 55 more truck loads per week in additional traffic. Beland stated that the existing parking along Schaefer Road will be moved behind the building. McKeefry stated the area between the additions and the road will be paved. Schmidt stated BelGioioso is completed another project in replacing the wastewater treatment plant to help reduce odor issues.

Don Mielke, W5484 Mielke Road, spoke in opposition to location of plant. He feels it is better suited in an industrial park.

Dave VanElzen, W5223 Schaefer Road, spoke in opposition. He stated illumination of the height as a factor, odor as a factor, and well water as a factor.

Randy Theimer, W4255 Schaefer Road, spoke in opposition. He asked if there were DOT concerns with shading and icing of roads. He also stated that they added a tower in 2018 so they should not need another one and called it poor planning. Wayne Fischer, no address given, spoke in opposition. He stated lost water due to well issues and odor as factors.

Dean Peters, vacant land owner to west of property, spoke in opposition. He stated he has no desire to build house on his property which was a long term plan of his. He also stated the tower is not part of the natural beauty of the area, nor should it be. He also stated odor, noise, water, and shadowing concerns as factors.

John Zornow, no address give, spoke in opposition. He stated that BelGioioso owns 23-acres and they can place the tower somewhere else on the property. He also stated snow drifting issues as a factor.

Joe Mueller, W4991 Hwy 55, spoke in opposition. He stated that the proposal is a nuisance with odor and traffic. He also stated that is was in the wrong location and feels it should be in an industrial park. He stated that he is a County Supervisor and received several call against this project.

Wendy Yingling, W5484 Mielke Road, spoke in opposition. She stated it is too close to the road and referenced accidents.

Staff memo to the Zoning Board of Appeals dated May 13, 2020 was included.

- 9) Close Public Hearing and Reconvene Regular Meeting: The Public Hearing was closed and the regular meeting reconvened at 6:08pm.
- 10) Items for Discussion and Possible Action: The following items were discussed:
  - a. Variance BelGioioso Cheese N8495 Hwy 55. The Zoning Board of Appeals had general discussion regarding the variance requests. The Zoning Board of Appeals found the following in regards to the setback variance

from Section 117-90(n)(1):

- 1. That the setback variance will not harm the general public as the building currently encroaches into the setback area further than the proposed additions.
- 2. That the proposed use of the property will not change

- 3. That the property is unique in that the existing building currently encroaches into the front setback requirement. The proposed additions will not further encroach into the setback.
- 4. That the building currently does not meet setback requirements, denial of the setback variance would deprive the applicant of a right they currently have.
- 5. That the building was constructed prior to current zoning setbacks and its setbacks are unique to the area.
- 6. That the variance request is not self-created.

Motion (Majewski/Capper) to approve the setback variance. Motion carried 4-0.

The Zoning Board of Appeals found the following in regards to the height variance from Section 117-90(m)(1):

- 1. That the potential shadows created by the 120-foot structure is contrary to the public interests.
- 2. That the literal interpretation of the zoning ordinance will not deprive the applicant of rights commonly enjoyed by other properties because the 120-foot height does not apply to exempt structures of the zoning ordinance and are not similar to existing towers/structures on the site.

Motion (Jung/Majewski) to deny the 120-foot petition/application for the height variance. Motion carried 4-0.

11) Adjourn: Motion (Jung/Capper) to adjourn at 6:38pm. Motion carried 4-0.

Dated: May 15, 2020 Prepared by: Mark Mommaerts, AICP, Planner

Craig Majewski, Secretary Date Zoning Board of Appeals



#### ZONING BOARD OF APPEALS MEETING

**From:** Mark J. Mommaerts, AICP, Planner

#### VILLAGE OF HARRISON

Meeting Date: June 16, 2020

#### Title:

Variance - BelGioioso Cheese

#### **Issue:**

Should the Zoning Board approve a variance request to exceed the height limitation?

#### **Background and Additional Information:**

The applicant, BelGioioso Cheese, Inc., is resubmitting a request for a height variance in order to construct a dryer tower at their plant at N8495 Hwy 55, Parcel Ids 40072, 40074, 40078, & 40070. BelGioioso Cheese uses the plat to process whey into other marketable products. BelGioioso Cheese took ownership of the property in 2006, however, the buildings have been in existence before zoning. The property is currently zoned Industrial & Manufacturing [IM]. The IM zoning district limits the height of the principal building to 45-feet. Several additions have been added to the building, that either meet the zoning requirements or have receive variance approval. At the last Zoning Board meeting in May, the Zoning Board approved a variance from the front yard setbacks but denied a variance for 120-feet. The revised variance request is for 91-feet, a substantial difference from the previous 120-foot request.

BelGioioso Cheese is proposing additions to a couple of areas of the building. One addition is a proposed tower for a dryer. This addition is proposed to be approx. 96-feet x 96-feet (9210-square feet) in area and 91-feet tall. The dryer tower requires a variance from the 45-foot height limitation. The tower is proposed to be 91-feet, which will match the height of the existing evaporator tower. A smaller, evaporator tower, was approved in 2018 under an exemption for height. However, due to the size, location, and total height of the proposed dryer tower, a variance is needed.

The applicant has included a written narrative in support of the variance request from C. Renier Architects, Inc. They claim the property is unique since the building pre-dates the current zoning code. It is also unique due to the process utilized for transforming whey into other products. They claim there is no harm to the public interest because there are already two towers exceed the height limitation, the dryer tower would match the height of an existing tower. Without the additions, they claim that the plant will not be able to function as needed and production will be moved to another facility. They claim there is an unnecessary hardship for economic reasons and production reasons due to the natural evolution of the whey process.

A revised analysis, indicating existing and proposed conditions by month, of light/shading on the homes and streets to the north due to the proposed height of the dryer tower was submitted. Staff's only concern is the impact the dryer tower height may have an this home.

#### **Zoning Ordinance:**

Section 117-90 – Industrial & Manufacturing [IM]

(m) Building height and stories.

- (1) *Principal structure*. The principal building or structure shall not exceed 45 feet in height.
- (2) Accessory structures. Accessory building or structures shall not exceed 24 feet in height.

#### Conclusions of Law/Requirements for a Variance (Section 117-360):

- 1. The variance is not contrary to the public interest and that such a variance will be in general harmony with the purposes and intent of this [Zoning] chapter. *Staff feels that reduction of the tower height from 120-feet to 91-feet does not substantially increase the harm to the public interest or further harm the public interest.*
- 2. The variance will not permit the establishment of a use which is not permitted or permissible in the district. *Staff finds that the proposed use of the property will not change*.
- 3. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district. *Staff finds that the process used to transform whey into other marketable forms is unique to this building and property.*
- 4. The literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district. *Staff finds that there are exemptions for height limitations for bell towers, cooling towers, antennas, and other similar structures. The refining process for the whey product necessitates a larger building footprint than the exemptions typically allow. The building currently has several towers that exceed the height limitation. The proposed height will match the height of an existing portion of the building, a right already enjoyed by the property.*
- 5. The hardship is not shared generally by other land or buildings in the area. *Staff finds that due to the nature of the building use, as a whey processing plant, it is unique to the area.*
- 6. The hardship results from the strict application of this chapter and is not the result of selfcreated or self-imposed circumstances. *Staff finds that the variance request is not selfcreated*.

#### **Recommended Action:**

Based on the information provided, staff recommends approval of the height variance for a maximum height of 91-feet, to match the existing height of the building.

#### Attachments:

- Variance Application
- Written Narrative
- Plan Set

### Village of Harrison

W5298 Hwy 114 Harrison, WI 54952 Phone: 920-989-1062

#### VARIANCE & ADMINISTRATIVE APPEAL APPLICATION

| Applicant Information  |  |   |  |                               |
|--|--|---|--|-------------------------------|
| Applicant Name (Indiv., Org. or Entity)  | Authorized Representative  |   | Title  |                               |
| C. RENIER ARCHMTECTS, INC.   | CHRIS RENIER   |   | OWNER / ARCHITECT                            |                               |
| Mailing Address  | City DE PERE   |   | State  | Postal Code                   |
| 348 MAIN AVE.  | 0-   |   | WI   | 54115                         |
| E-mail Address<br>chris @ renieragch. com  | Telephone (inclue) $920 - 330$   | de area code)<br>a - 0500                                       | Fax (include area code)                      |                               |
| Landowner Information (if different than Applicant)  | 1  | 10300   |  |                               |
| Name (Organization or Entity)  | Contact Person   |   | Title  |                               |
| BELGIDIOSO CHEESE INC  | A (5)  | LAND  | Title PROJECT MANAGER                        |                               |
| Mailing Address  | City   |   | State  | Postal Code                   |
| 4200 MAIN ST,  | GREEN B  | - /   | WI   | 54311                         |
| E-mail Address   | Telephone (inclu   |   | Fax (include area code)                      |                               |
| amy, beland @ belgioidsu.com   | (920)863   | )-1123  |  |                               |
| Project or Site Location Site Name (Project):  |  |   |  |                               |
| SHERWOOD DRYER AROJECT   |  | Location ID(s):   | 40072  |                               |
| Site Address / Location:   |  | Plat / CSM / Lot  | No.:   |                               |
| N8495 HWY. 55, MENASHA WI 5  | 54952  | 131-000-000   | 0-000-00                                     | 201824-00-110B                |
| Quarter: NW XNE SW SE  | Section: 24  | Township:   | 20 N   | Range: 18 E                   |
| Legal Description: 137-139, J1128-47 NE 1/4 NE   | 14 SEC 24-20-  | 18 COM NEK  | SEC 24,0                                     | VIRDS, SIGROS, ETTRE          |
| Current Zoning: ///DUSTRIAL  | Proposed Zor   | nina: INDUSTR   | IAL 1  | NIGRDS TO POBEX, 15A          |
| Current Uses: WHEY PLANT   | Proposed Use   | es: WHEY PL   | ANT  | HWY / ROW J2364-22            |
| Lot Dimensions: Front: 271,18 Side: 206.66 Rear:3  |  |   |  |                               |
| Variance or Administrative Appeal Petition (see  | reverse side a   | lso)  |  |                               |
| List which code section(s) requesting variance from or decision appealing: Describe the Reason(s   | s) for the Request (a  | attach separate doc   | ument if neede                               | ed):                          |
| SEC 117-50 Height BELGIOLOSO   | CHEESE 15  | REQUESTING  | 5 TO CON                                     | STRUCT A                      |
|  |  | 1 'TALL, 7  |  |                               |
| MAX: 45' WHEY DRY  |  |   |  |                               |
| PROPOSED :   | 10 20011   |   |  |                               |
| Fees   |  |   |  |                               |
| \$350.00   |  |   |  |                               |
| Certification & Permission   |  |   |  |                               |
| <b>Certification:</b> I hereby certify that I am the landowner of the pro-<br>in this form and attachments is true and accurate. I understan<br>permit may result in notices, fines / forfeitures, stop work orders<br><b>Permission:</b> As landowner of the property, I hereby give the<br>application, to determine compliance with the ordinances and to | nd that failure to con<br>, permit revocation a<br>ne permit authority | mply with any or al<br>and cease & desist<br>permission to ente | I of the provis<br>orders.<br>er and inspect | the property to evaluate this |
| Applicant Signature  |  |   | te Signed                                    |                               |
|  |  |   |  |                               |
| Landowner Signature (required)   |  | Da  | te Signed                                    |                               |
| Landowner signature (required)   | masa   | Da  | te Signed                                    |                               |

| LEAVE BL                                     | ANK - FOR MUNICIPAL US | SE ONLY |             |  |
|--|------------------------|---------|-------------|--|
| Application Withdrawal Signature (required): | Date Signed:           | Reaso   | n:          |  |
| Date Complete<br>Application Received:       | Fee Received \$        |         | Receipt No: |  |
|  | Date Paid:             |         | Taken By:   |  |

| Requir<br>filed. (Ple | ed Information The following items are required attachments. An application will not be considered complete until all attachments are ease attach additional sheets if more room is needed.)   |
|-----------------------|--|
| Site information      | Plan. A detailed drawing, drawn to scale, indicating lot lines, roads, driveways, buildings/structures, setbacks and any other pertinent on shall be submitted.  |
| 💢 Proj                | ect Plans. A detailed drawing, drawn to scale, indicating all floor plans, elevations and any other pertinent information shall be submitted.  |
| 🗌 Pho                 | tos (Optional). Photographs of the site, building or project may be submitted as part of the application.  |
| Writ                  | ten Statements. Statements responding to the following criteria shall be submitted.  |
| 1.                    | Unique Property Limitations. Unique physical limitations of the property (i.e. steep slopes, wetlands, etc.) that prevent compliance with ordinance requirements can be considered for a grant of a variance. The circumstances of an applicant (i.e. growing family, need for a larger garage, etc.) are not a factor in deciding variances. Nearby ordinance violations, prior variances or lack of objections from neighbors do not provide a basis for granting a variance. Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by an ordinance amendment request. |
|                       | Unique features of this property which prevent compliance with the terms of the ordinance include:   |
| C                     | EE ATTACHED  |
| 06                    |  |
|                       |  |
|                       |  |
|                       |  |
| 2.                    | No Harm to Public Interests. A variance may not be granted which results in harm to public interests. In applying this test, the Zoning<br>Board of Appeals must consider the impact of the proposal and the cumulative impacts of similar projects on the interest of the neighbors,<br>the entire community and the general public. These interests are listed in the Purpose and Intent section of the ordinance.<br>A variance will not be contrary to the public interests because:   |
|                       |  |
| 5                     | EEATTACHED   |
|                       |  |
| 3.                    | Unnecessary Hardship. An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (i.e. excavating a pond on a cant lot and then arguing that there is no suitable location for a home). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.   |
|                       | For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The Zoning Board of Adjustment must consider the purpose and intent of the zoning restriction, the zoning restrictions effect on the property and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests.                                    |
|                       | The unnecessary hardship is, and is present because:   |
|                       |  |
| SE                    | EATTACITED   |
|                       |  |
|                       |  |
|                       |  |
| Basis                 | for Approval: Variances shall only be granted when the Zoning Board finds:   |
| 1.                    | The variance is not contrary to the public interest and that such a variance will be in general harmony with the purposes and intent of this   |
| 2.                    | ordinance.<br>The variance will not permit the establishment of a use which is not permitted or permissible in the district.   |
| 3.                    | Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to   |
| 4.                    | other lands, structures, or buildings in the same district.<br>The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district.   |
| 5.<br>6.              | The hardship is not shared generally by other land or buildings in the area.<br>The hardship results from the strict application of this ordinance and is not the result of self-created or self-imposed circumstances.  |



4200 Main Street Green Bay, Wisconsin 54311 Telephone: (920) 863-2123 Fax: (920) 863-8791 belgioioso.com

#### 1. Unique property limitations:

BelGioioso Cheese Inc. purchased the property in 2006, but the current whey plant has been in operation at this site since prior to 1986. It pre-dates the current zoning ordinance which was enacted in 2008. The original (1986) evaporator tower was built very close to the north property line, and is within the setback as defined by the current ordinance.

The location of the 2018 evaporator was determined based the original evaporator location and natural flow of the production process. The location of the proposed new dryer building is based on pre-existing building conditions and overall process flow.

#### 2. No Harm to Public Interests:

The proposed addition will not harm the public interest, as it is similar to existing conditions on site. The building will be constructed to match the height and appearance of the 2018 evaporator addition. To minimize the net area of the addition, the proposed plan includes removing an existing warehouse so that the new building is partially contained in the original footprint. The effects of building shadowing are shown on the attached drawings (with and without the proposed building), and do not indicate any safety concerns at the intersection of Schaefer Road and Hwy 55.

#### 3. Unnecessary Hardship:

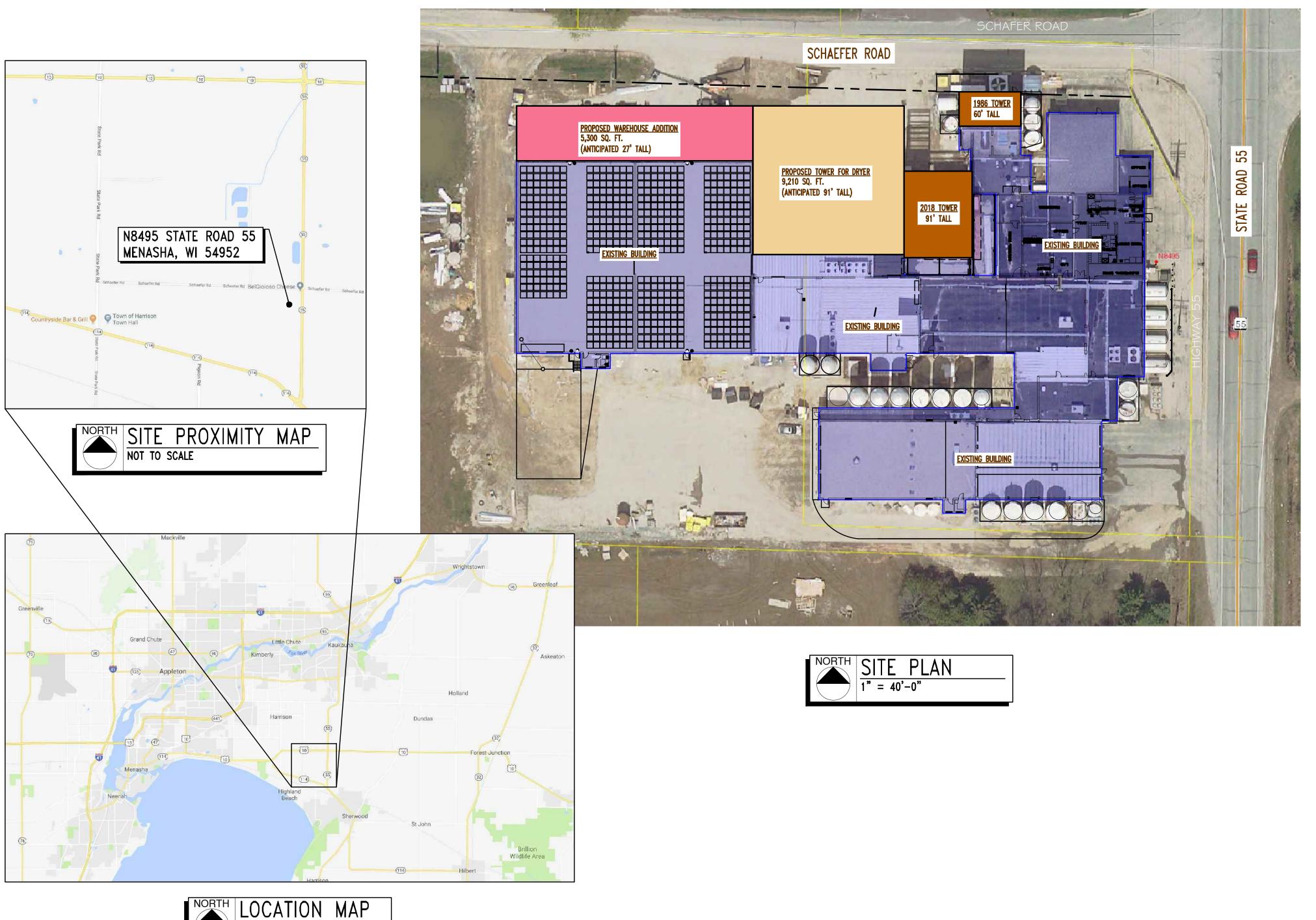
Expanding the whey process has become a necessity in today's competitive market. The investment of the 2018 Evaporator was our portal into the next generation of processing whey. The natural evolution of the process is to further dry the whey proteins, by installing a state of the art dryer.

If BelGioioso is unable to expand the drying operation, it will be detrimental to the longterm viability of the existing whey plant. It is Belgioioso's desire to continue to operate from this location, as we have already shown a long-term commitment and investment in this plant and the local community. The relocation of the entire operation would also have a negative financial impact on BelGioioso Cheese, as well as the Village of Harrison.



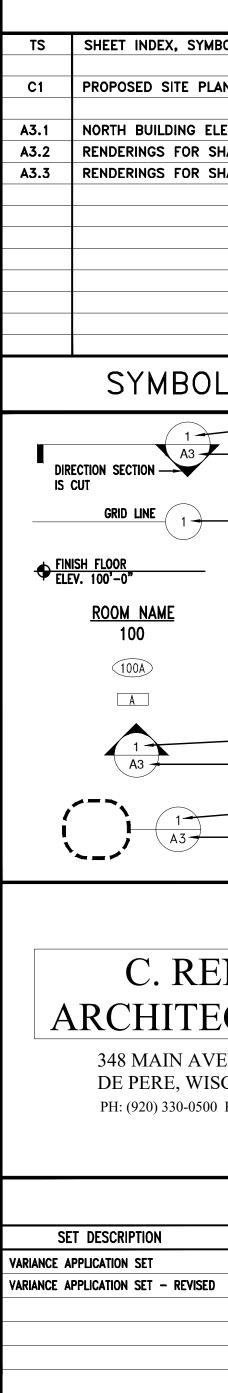
American Grana<sup>3</sup> Asiago Auribella<sup>8</sup> Burrata CreamyGorg<sup>6</sup> Crescenza-Stracchino Crumbly Gorgonzola Fontina Fresh Mozzarella Mascarpone Italico<sup>16</sup> Kasseri Parmesan Pepato Peperoncino<sup>8</sup> Provolone Ricotta con Latte<sup>8</sup> Romano

# **BELGIOIOSO - SHERWOOD** EVAPORATOR PROJECT N8495 STATE ROAD 55, MENASHA, WI 54952



NOT TO SCALE

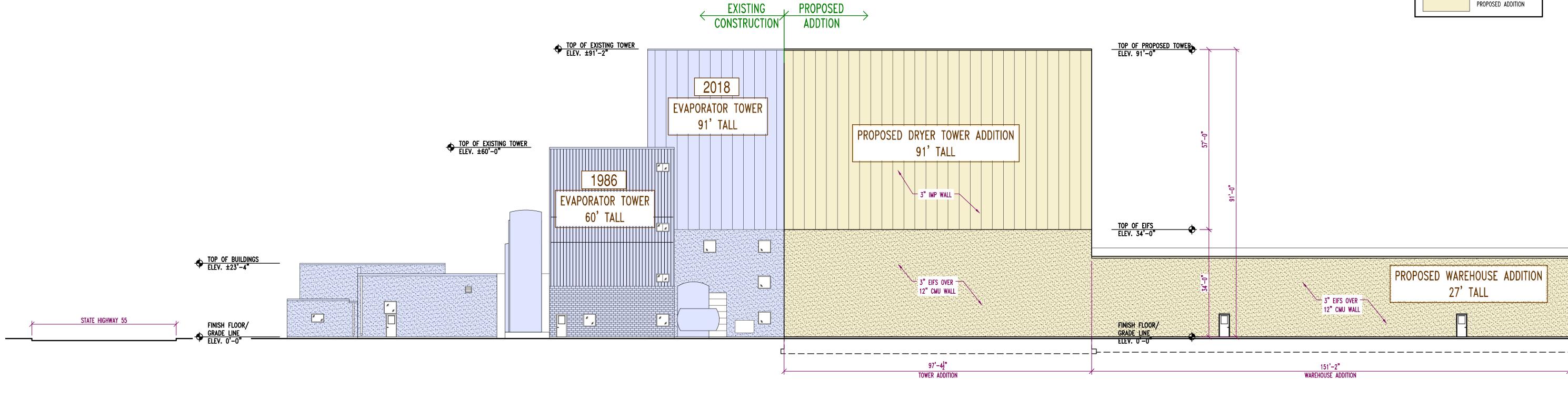
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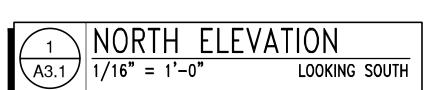


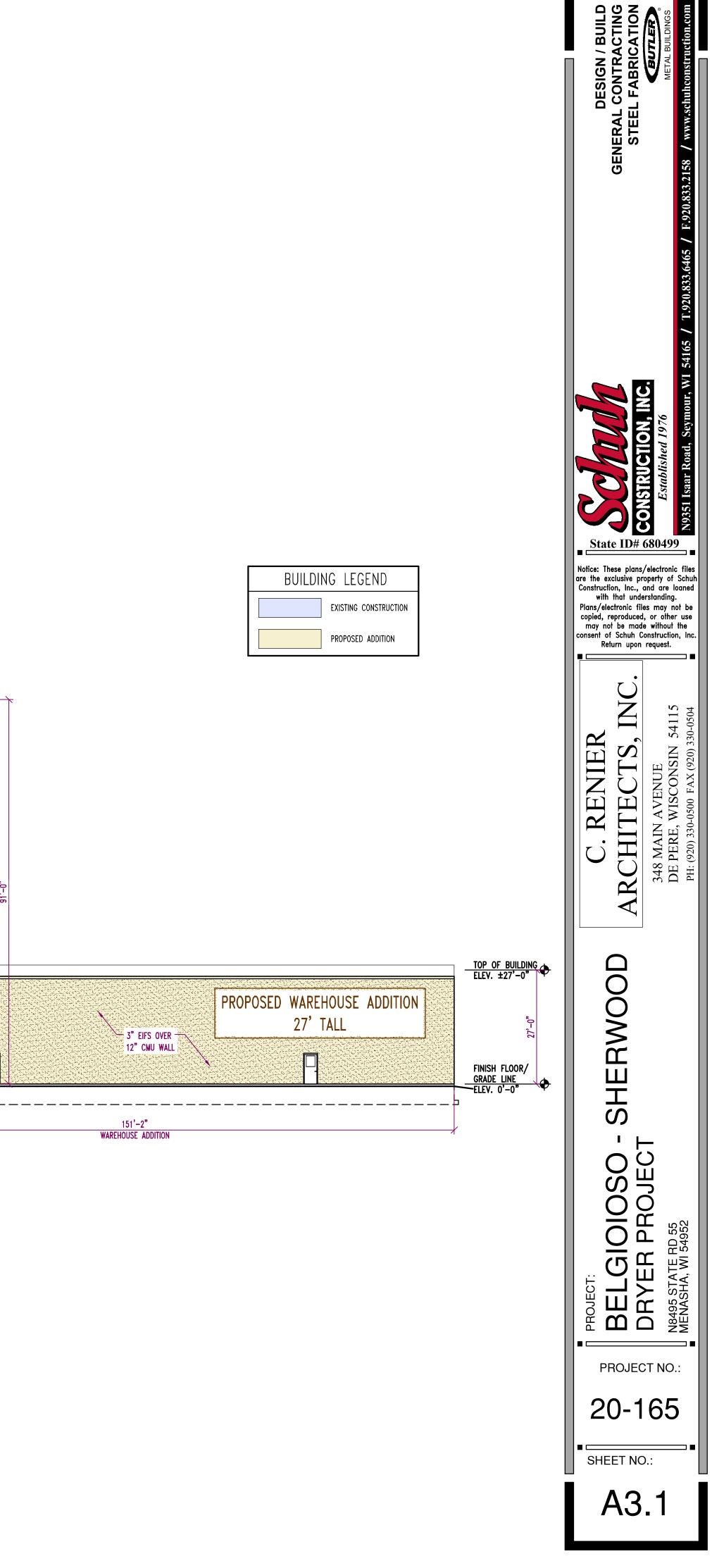
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| WINDOW TAG                          |                     |      |                                |
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| 5-21-20                             | TS, C1, A3.1, A3.2, | A3.3 |                                |
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|--|--|--------------------------------------|--|
| C. RENIER  | ARCHITECTS, INC.   | 348 MAIN AVENUE                      | PH: (920) 330-0500 FAX (920) 330-0504              |
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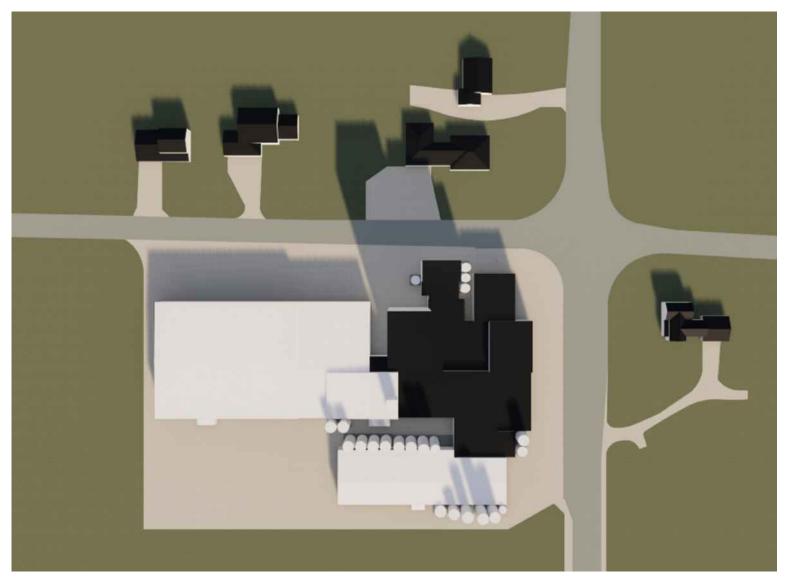


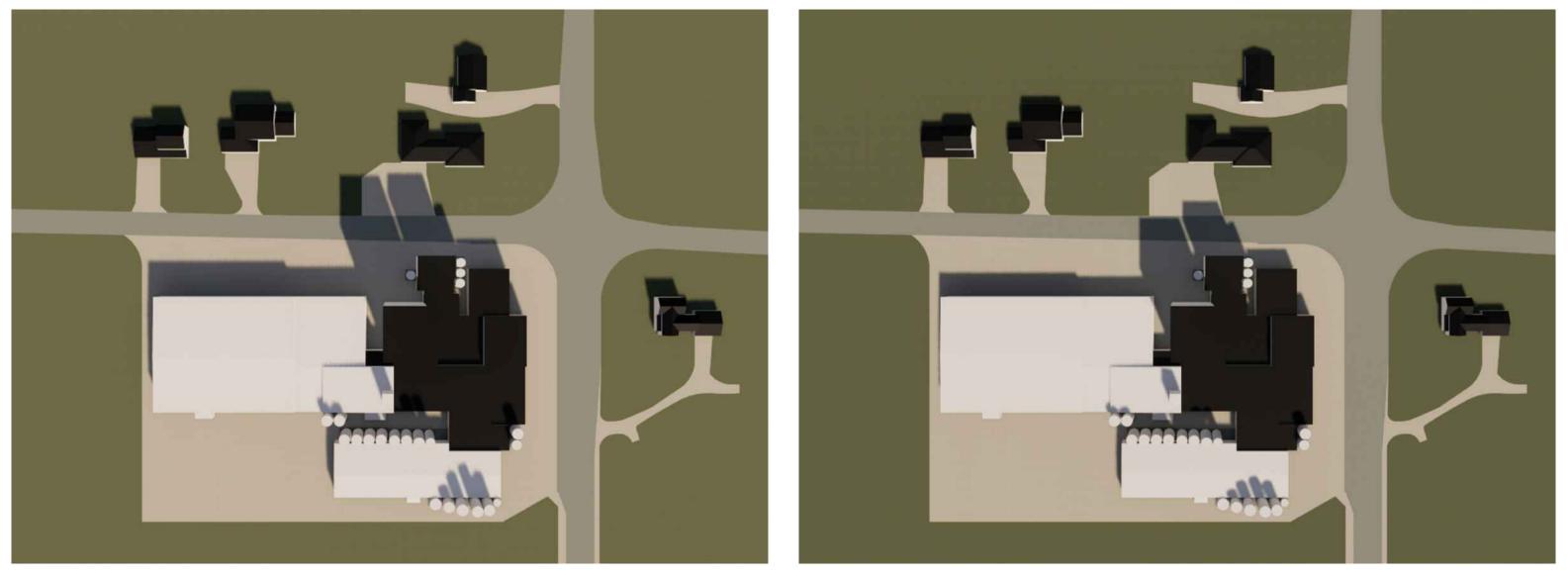






## **EXISTING SHADOW CONDITIONS - BY MONTH**







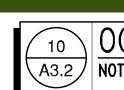




















MARCH 15 NOT TO SCALE

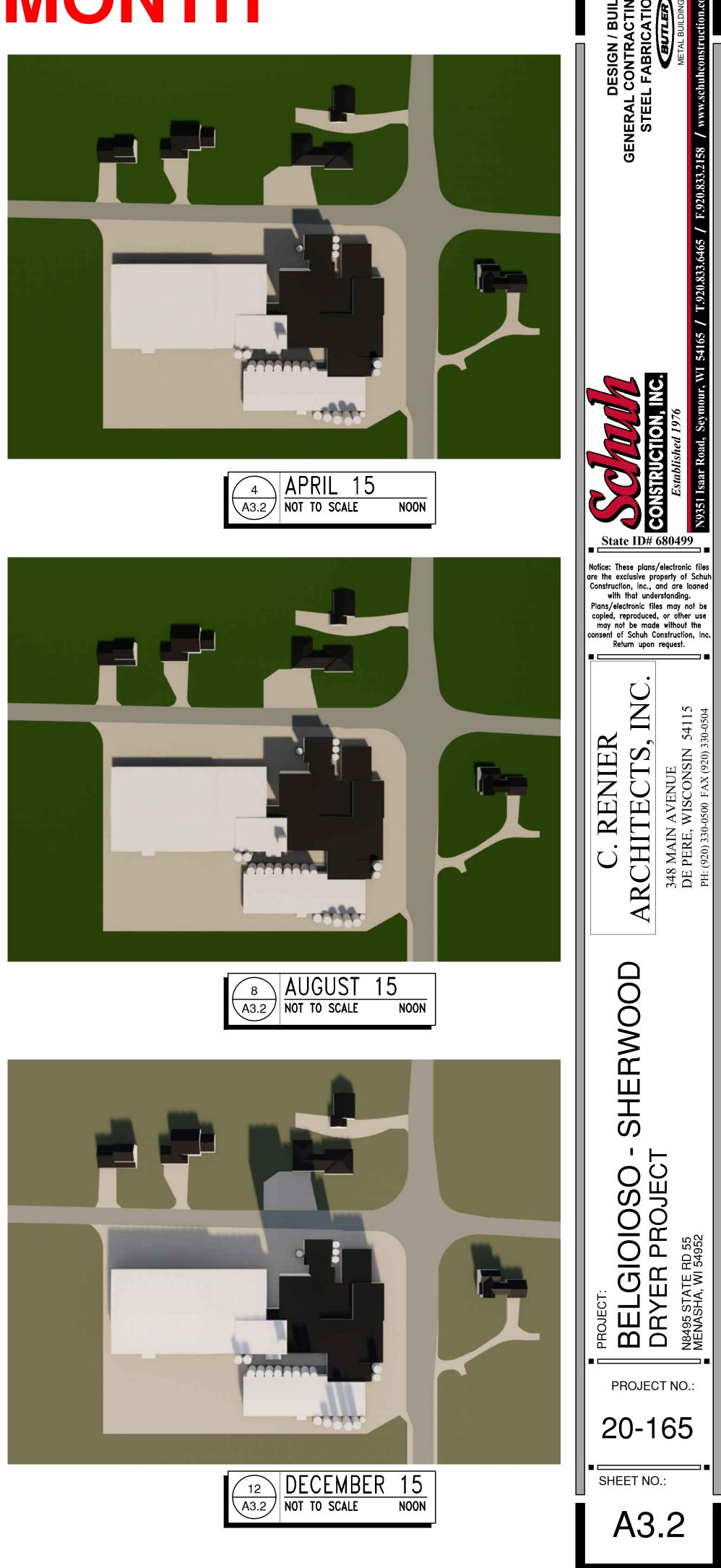
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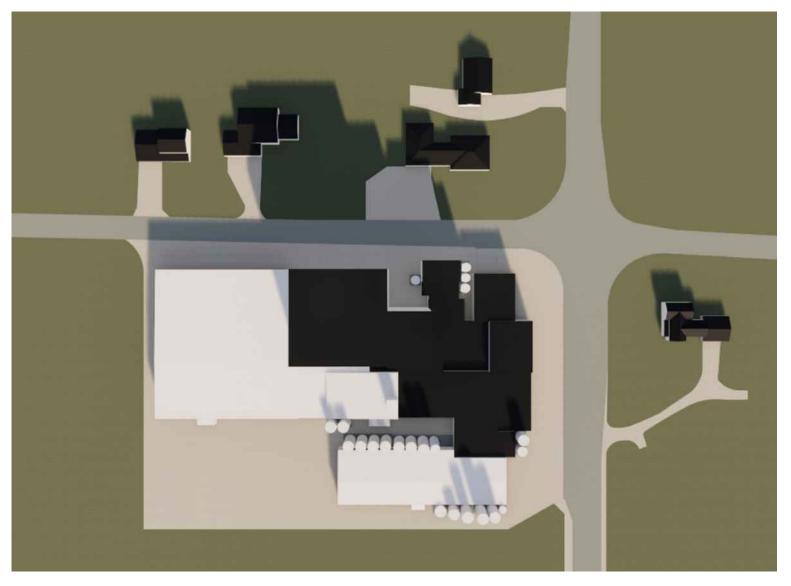








### **PROPOSED SHADOW CONDITIONS - BY MONTH**



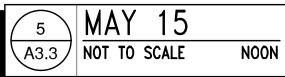


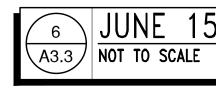


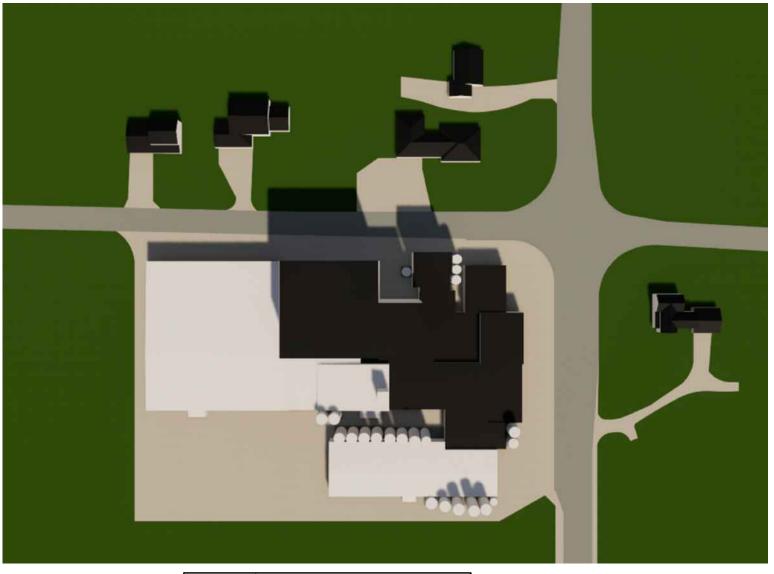










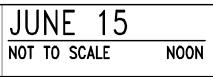


























A3.3 NOT TO SCALE

NOON

