

**Please note: Minutes are unofficial until approved by the Plan Commission at the next regularly scheduled meeting.**

## **NEW BERLIN PLAN COMMISSION**

**MAY 4, 2009**

### **MINUTES**

#### **PRIVILEGE OF THE FLOOR**

The Plan Commission Meeting was called to order by Mayor Chiovatero at 6:05 P.M.

In attendance were Mayor Chiovatero, Mr. Sisson, Mr. Christel, Alderman Ament, Mr. Felda, Ms. Broge, and Ms. Groeschel. Also present were Greg Kessler, Director of Community Development; Amy Bennett, Associate Planner; Jessica Titel, Associate Planner; Nicole Hewitt, Storm Water Engineer; Corliss Tischer, Code Compliance Specialist; and Mark Blum, City Attorney.

Motion by Ms. Broge to approve the Plan Commission minutes from March 26, 2009. Seconded by Mr. Sisson. Motion carried unanimously.

Motion by Mr. Christel to approve the Plan Commission minutes from March 30, 2009. Seconded by Mr. Felda. Motion carried unanimously.

#### **PLAN COMMISSION SECRETARY'S REPORT - NONE**

#### **CONTINUED BUSINESS**

1. (7)AB SP-09-172 Shim Subdivision – 19300 W. Observatory Rd. – Conceptual 8-Lot Conservation Subdivision sketch plan.

No action taken, discussion followed.

Ms. Bennett stated at the last Plan Commission Meeting there was a discussion of three different sketch plans and some discussion on the cul-du-sac. Earlier versions showed a connection to the east. Option 3 was favored at the last meeting and removes that connection, adds a cul-du-sac, and some changes to the boulevard. Option 4 has a reduced boulevard, same cul-du-sac, and a bit of change to the configuration. Pictures of the visit were shown.

Mr. Doble, Landcraft, stated he spoke to Jerry Samolyk who runs the Observatory. He was not as concerned about the outdoor lighting on the houses as long as we had a restriction to use full cut-off fixtures. The biggest problem is

the glow from a mercury lamp. Mr. Doble stated they may be interested in yard lights to light up the road. Mr. Samolyk was not concerned as long as we used full cut-off fixtures. Mr. Doble stated this type of language would be written in the restrictions for the subdivision regarding the lighting.

Mr. Doble also stated he spoke to a representative from the DNR who represents this region's permitting for land fills. He stated there was a permit for the land fill to bury clean fill from highway projects. The DNR has had no complaints from any neighbors. There was no record of anything other than clean fill. Mr. Doble spoke with Nancy Payne from the Water Supply section of the DNR. They were aware of the landfill and location and that the neighbors expressed the concern about ground water contamination. To date, there are no reports of ground water contamination.

There was a discussion regarding the density and the wetland delineation. The density was rounded up as referred to in 275-44(b). Ms. Bennett stated the wetland delineation report will be submitted with the rezoning if they move to the next step to rezone the property and then do the wetland delineation. Discussion on the soils report followed. Class 1 would be the better draining type of soils, and then it goes down from there. This area contains Class 3 soils as well.

Alderman Ament had concerns about the divided section of the roadway. Mr. Doble stated the boulevard section is there for aesthetics. The boulevard section of the roadway would be taken out and an infiltration system area would be created elsewhere on the property. There was discussion regarding lights going up or down the sides of the homes for aesthetic purposes, and that there was no concern from the Observatory. The entrance sign would be lit, and they will work with the Observatory regarding the lighting.

Ms. Broge referred to Item #4 from the Staff Report stating out of 38 acres approximately 12 acres of farmed land will be lost. The low land areas would still be used for farming. The low land area is located north and west of the wetland line where the low lying marsh is located. Those lands are typically farmed. The access for farming is from a neighboring property, and would not be where the development would occur.

## **NEW BUSINESS**

2. (4)CT&JT PG-384 Domestic Livestock. – Interpretation of Zoning Code Section 275-41(a)(2) – Limitations on Keeping of Livestock & Boarding Facilities – Keeping of Horses.

Motion by Mr. Sisson to approve the interpretation that the provision in Zoning Code 275-41.A(2)(a) does apply to the amount of livestock that may be kept on any one premise which is limited to one head of livestock per acre and applies to the keeping of horses at a boarding facility based on the following reasons:

- 1) Under Zoning Code Section 275-70, the definition of Keeping and Raising of Animals is defined as “the use of land for raising, pasturing or yarding of livestock.”
- 2) Based on the interpretation by City Attorney Mark Blum of Zoning Code Section 275-41.A(2)(a), the number of horses permitted at boarding facilities would be limited to one horse per acre. See Attorney Mark Blum email letter dated January 14, 2009.
- 3) Staff’s interpretation has historically been that permitted uses under Zoning Code 275-41A (2) (a) is limited to one head of livestock per acre.
- 4) Zoning Code Section 275-41.A(2) Keeping and Raising of Animals states:
  - (2) Keeping and raising of animals.
    - (a) The keeping and raising of animals for commercial agricultural purposes shall be limited to one head of livestock or 20 head of fowl per acre.
    - (b) The following specific uses shall be considered conditional uses in the A-1 District only and shall meet the requirements of § [275-27](#):
      - [1] Commercial egg production;
      - [2] Commercial feed lots and livestock sale facilities; and
      - [3] Commercial fur farms.
    - (c) Prohibited uses:
      - [1] Confined commercial animal production is prohibited in all districts.
      - [2] The keeping of hogs or furbearing animals is prohibited in all districts with the exception of the A-1 District.
    - (d) The raising of animals shall be considered an accessory use in the R-1/R-2 Zoning District and shall meet the following requirements:
      - [1] The minimum lot size for the parcel shall be five acres;
      - [2] The raising of animals shall be for personal use only; and
      - [3] No pasture shall be located within 50 feet of an existing residence on an adjacent residential parcel.
    - (e) Boarding and riding academies are allowed in A-1, A-2, R-1/R-2 Zoning Districts.
      - [1] The minimum lot size for the parcel shall be five acres.

Seconded by Mr. Felda.

Mr. Felda withdrew his second.

Seconded by Alderman Ament for discussion purposes.

Motion by Ms. Groeschel to table the request for Interpretation of Zoning Code Section 275-41(a)(2) – Limitations on Keeping of Livestock & Boarding Facilities – Keeping of Horses. Seconded by Alderman Ament. Motion passes with Mayor Chiovatero, Mr. Christel, Alderman Ament, Mr. Felda, and Ms. Broge voting “yes”, and Mr. Sisson voting “no”.

3. (7)JT UA-09-13 Daniel Matter – 3120 S. Calhoun Rd. – Garage Addition.

Motion by Mr. Christel to approve the construction of a building addition onto a legal non-conforming single-family home located at 3120 S. Calhoun Road subject to the application, plans on file and the following conditions:

- 1) Architecture of proposed addition shall match the architecture of the existing structure and shall be reviewed by Inspection Services Division at the time of building permit.
- 2) The addition shall be constructed in the location depicted on the plans on file.
- 3) Applicant shall provide the elevations of the grades adjacent to the existing structure.
- 4) Property is being converted from a two-family home to a single-family home. The property shall be used as a single-family residential home.
- 5) Apply and obtain appropriate building, plumbing and electrical permits.
- 6) If the septic system is to remain, Waukesha County Preliminary Site Evaluation required prior to building permit issuance.
- 7) If connections to sewer and water are made, the applicant shall properly abandon the existing well and septic system and apply for plumbing permits for the connections.
- 8) The addition shall meet all requirements of the 2009 State of Wisconsin Uniform Dwelling Code Comm. 21 through 23. This will be reviewed at time of building permit.
- 9) Applicant shall apply for an erosion control permit and install erosion control measures if deemed necessary by Inspection Services.

Seconded by Ms. Groeschel. Motion carried unanimously.

4. (7)AB SG-09-09 Moorland Reserve – 4855 S. Moorland Road – Monument Signs.

Motion by Ms. Broge to approve the three (3) monument signs to be located along Moorland and Beloit Roads subject to the application, plans on file, and the following conditions below:

Waiver Request #1: The applicant is requesting a waiver from the City’s Sign Requirements under Section 275-61 for monument sign height, square footage and address plaque. See attached applicant’s letter.

- 1) “Horizontal” monument sign at the corner of Moorland and Beloit Road shall identify the name of the business park (Moorland Reserve) only to serve as the master identification monument sign under Section 275-61I(4).
- 2) Due to existing site conditions such as the speed of traffic, size of the site, scale of the buildings, staff recommends approval of the waiver.
- 3) Pursuant to Section 275-61(I)(c)(2), “The monument sign shall not exceed eight feet (8’) in overall height above the mean lot grade and shall be set back entirely outside the base setback line”. The applicant is proposing the two vertical monument signs at the entrance drives to be 9 feet, 4 inches (9’4”) tall. The height of the horizontal sign is within code requirements.
- 4) Pursuant to Section 275-61(I)(c)(3), “Monument signs shall not exceed 32 square feet in face area per side”. The face of each vertical monument sign is proposed at approximately 48 square feet (6’ x 8’). The face of horizontal sign at the corner is proposed to be 80 sq. ft.
- 5) Pursuant to Section 275-61I(1)(c)[5], “address plaques or numbers shall be required on the monument base or incorporated onto the sign face.” Applicant is requesting a “Westridge” plaque without the address. The address will be on the buildings.
- 6) The Plan Commission has the authority to grant this waiver pursuant to Section 275-52(C), which states “The Plan Commission may waive or modify any or all of the other requirements of this article if it determines that:
  - a) The site or activity in question will have no appreciable off-site impact;
  - b) Compliance with the requirement(s) is impractical or impossible due to site conditions or other circumstances beyond the control of the applicant; or
  - c) The specific requirement is not necessary for a particular site to ensure compliance with the requirement of this chapter.

Seconded by Mr. Christel.

Motion withdrawn by Ms. Broge. Seconded by Mr. Christel.

Motion by Alderman Ament to approve the Horizontal Monument Sign along Moorland Rd. and Beloit Rd. as presented with all necessary waivers. Seconded by Mr. Christel. Motion carried unanimously.

Motion by Alderman Ament to approve the Two Entrance Signs to a maximum height of 8’ along with address plaque waiver and area waiver. Seconded by Mr. Felda. Motion failed with Alderman Ament and Mr. Felda voting “yes” and Mayor Chiovero, Mr. Christel, Mr. Sisson, Ms. Broge, and Ms. Groeschel voting “no”.

Motion by Ms. Broge to approve the Two Entrance Signs as presented with all necessary waivers including the address waiver. Seconded by Mr. Sisson. Motion passes with Mayor Chiovatero, Mr. Christel, Mr. Sisson, Mr. Felda, Ms. Broge, and Ms. Groeschel voting “yes” and Alderman Ament voting “no”.

5. (1)JT UA-09-16 Robert Kannegiesser – 1430 S. River Rd. – Addition to Legal Non-conforming Home.

Motion by Alderman Ament to approve the construction of a building addition onto a legal non-conforming single-family home and retaining wall, and fill within a floodplain to flood proof the existing structure, and proposed addition in accordance with Zoning Code Chapter 275-65.22 – 275-65.31 and FEMA regulations located at 1430 S. River Road subject to the application, plans on file and the following conditions:

- 1) Planning:
  - a) Applicant shall receive a variance from the Board of Appeals for the addition and flood proofing fill around the addition prior to the issuance of the Zoning Permit. If the variance for the addition is not granted, the Zoning Permit shall only permit the fill required to flood proof the existing structure.
  - b) Architecture of proposed addition shall match the existing structure and shall be reviewed by Inspection Services Division at the time of Building Permit.
  - c) The addition shall be constructed in the location depicted on the plans on file.
  - d) Dry land access will need to be waived by from the Fire and Police Departments prior to issuance of the Zoning Permit.
- 2) Engineering:
  - a) Applicant shall complete the flood proofing in accordance with Zoning Code Sections 275-65.22 through 275-65.31 and FEMA regulations.
  - b) See email correspondence from Staff to Mr. Kannegiesser dated April 2, 2009. Elevations listed in the email are correct.
    - i. Base Flood Elevation = 842.2
    - ii. Flood Protection Elevation = 844.2
  - c) Provide site plan showing proposed addition and proposed fill locations, fill limits, and the final elevations of the fill and structure.
  - d) Provide elevation views of the proposed structure showing proposed floor elevations, including garage, the limits and elevations of the fill and crawl space fill elevations. Following is the list of elevations that will be required for the Elevation Certificate, these will also be required to be shown on the plans.
    - i. Top of bottom floor (including basement, crawl space, or enclosure floor)
    - ii. Top of next higher floor.
    - iii. Bottom of the lowest horizontal structural member.

- iv. Attached garage (top of slab)
  - v. Lowest elevation of machinery or equipment servicing the building (Describe type of equipment)
  - vi. Lowest adjacent (finished) grade
  - vii. Highest adjacent (finished) grade
  - e) Certification of a registered soils engineer that the fill is placed in accordance with FEMA Technical Bulletin 10-01 is required. The City of New Berlin shall be notified prior to the placement of any fill on site. A representative of the City of New Berlin shall be on site during the placement of any fill on site.
  - f) Fill is being allowed at this site only to provide flood protection for the structure. No fill will be allowed to be placed outside areas that are directly related to the structure.
  - g) A grading recert is required per DH Section VI.D.7.
  - h) An Elevation Certificate, FEMA Form 81-31 will be required pre-construction (using the proposed information) and post-construction (using the as-built information). Contact the Stormwater Division for information.
- 3) Inspection:
- a) Apply and obtain appropriate building, plumbing and electrical permits.
  - b) The addition shall meet all requirements of the 2009 State of Wisconsin Uniform Dwelling Code Comm. 21 through 23. This will be reviewed at time of building permit.
  - c) Applicant shall apply for an erosion control permit and install erosion control measures if deemed necessary by Inspection Services.
  - d) Building plans submitted shall be to scale 1/4" = 1'-0"
  - e) Building plans Shall indicate the specific requirements of Comm. 21.33 are being met.

Seconded by Mr. Sisson. Motion carried unanimously.

6. (7)JT UA-09-15 Gary Lando – 5101 S. Racine Ave. – Addition to Legal Non-conforming Home.

Motion by Alderman Ament to approve the construction of a building addition onto a legal non-conforming single-family home located at 5101 S. Racine Avenue subject to the application, plans on file and the following conditions:

- 1) Architecture of proposed addition shall match the architecture of the existing structure and shall be reviewed by Inspection Services Division at the time of building permit.
- 2) The addition shall be constructed in the location depicted on the plans on file.
- 3) Maintain all existing grading & drainage patterns throughout both the rear yard & side yard areas.

- 4) Match the existing yard grade, elevation, around the base of the addition +/- 6" (+/-937.5).
- 5) Apply and obtain appropriate building, plumbing and electrical permits.
- 6) Waukesha County Preliminary Site Evaluation required prior to building permit issuance.
- 7) The addition shall meet all requirements of the 2009 State of Wisconsin Uniform Dwelling Code Comm. 21 through 23. This will be reviewed at time of building permit.
- 8) Applicant shall apply for an erosion control permit and install erosion control measures if deemed necessary by Inspection Services.

Seconded by Ms. Broge. Motion carried unanimously.

7. (5)AB SG-09-13 Passport Brewhaus – 4900 S. Moorland Rd. – Monument Sign Waiver.

Motion by Alderman Ament to approve the request along with Waiver Request #1 for two wall signs located at 4900 S. Moorland Road subject to the application, plans on file and the following reasons:

WAIVER REQUEST #1: Applicant is requesting a waiver from Section 275-61I(1)(c) which states that monuments signs are required along arterials, including Moorland and Beloit Roads.

- 1) Monument sign at entrance would not be visible from Moorland or Beloit Roads.
- 2) Monument signs are not allowed within City right-of-way.

Seconded by Mr. Sisson. Motion carried unanimously.

8. (1)JT LD-7-08 Donald Kraft – 12723 W. Honey Ln. – Se ¼ Sec. 1 – Extension to the Conditions of Approval.

Condition #3 – The existing detached garage and shed, as identified on the CSM, shall be removed within one year of the date the City signs the CSM.

Condition #4 – The existing driveway for Parcel #2 shall be relocated to a location entirely on Parcel #2 within one year of the City signing the CSM. New driveways for both parcels shall meet the requirements in Section 275-57.E of the Zoning Code.

Motion by Ms. Groeschel to recommend to the Common Council approval of a one-year extension to Conditions #3 and #4 of the Two-Lot Certified Survey Map approval from July 7, 2008 (Plan Commission approval date) and July 22, 2008 (Common Council approval date) located at 12723 W. Honey Lane subject to the following condition:

- 1) Honey Lane is being resurfaced in 2009 along the applicant's property. The new driveway shall match the existing surface of the roadway and repair any damages to the surface of the roadway.

Seconded by Mr. Christel. Motion carried unanimously.

9. (7)GK PG-976(a) Urban Service Area Boundary Amendment – New Berlin West High School, 18695 W. Cleveland Avenue.

Motion by Mr. Sisson to recommend to Common Council the approval of a Resolution amending the Urban Service Area Boundary to include the New Berlin West High & Middle School located at 18695 W. Cleveland Avenue and direct the City Attorney to draft said Resolution. Seconded by Mr. Christel. Motion passes, with Mayor Chiovaturo, Mr. Christel, Mr. Sisson, Mr. Felda, Ms. Broge, and Ms. Groeschel voting “yes” and Alderman Ament voting “no”.

**CONSENT AGENDA** (One motion and second will deny all of the following items listed. Any item may be pulled from the list and handled separately)

10. (1)AB R-1-04 Carleton Point Condominiums – 13050 W. Cleveland Ave. Rezone from I-1 to Rm-1/PUD and C-2/PUD for a 48 Unit Condominium Complex with a Planned Unit Development Overlay and Wetland Delineation with a Planned Unit Development Overlay. (Public Hearing 1/9/06, Tabled 2/6/06, 10/2/06, 3/5/07)

No discussion, item to remain on the agenda.

11. (1)AB U-85-98 D.C. Investments – 13050 W. Cleveland Ave. – Senior Housing Development (No action 12/7/98, 11/8/99, 7/9/01, Tabled 2/4/02, 9/9/02, 10/2/06)

No discussion, item to remain on the agenda.

### **COMMUNICATION**

12. Communication To: Plan Commission  
Communication From: Jessica Titel, Associate Planner  
RE: Letter dated April 20, 2009 from T. Michael Schober regarding interpretation of Zoning Code Section 275-41(a)(2). (PG-384)

Plan Commission acknowledged receipt of this communication.

13. Communication To: Plan Commission  
Communication From: Greg Kessler, Director of Community Development  
Re: Planning Commissioners Journal, Spring 2009

Plan Commission acknowledged receipt of this communication.

### **ADJOURN**

Motion by Mr. Sisson to adjourn the May 4, 2009 Plan Commission Meeting at 7:41

P. M. Seconded by Ms. Broge. Motion carried unanimously.