

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

PUBLIC HEARING

6:00 P.M. (3)AB RZ-09-05 Buzzell – Approx. 18845 W. Norwood Dr. – Rezone from R-1/R-2 and C-2 to R-3 and C-2.

**NEW BERLIN PLAN COMMISSION
DECEMBER 7, 2009
MINUTES**

The public hearing relative to the request by Tim Lynch c/o RSV Engineering, Inc. to rezone the property located at 18845 W. Norwood Drive from R-1/R-2 and C-2 to R-3 and C-2 was called to order by Mayor Chiovarero at 6:04 P.M.

In attendance were Mayor Chiovarero, Mr. Sisson, Mr. Christel, Alderman Ament, Ms. Broge, and Ms. Groeschel. Also present were Nikki Jones, Planning Services Manager; Jessica Titel, Associate Planner; Amy Bennett, Associate Planner; and Mark Blum, City Attorney. Mr. Felda was excused.

Mayor Chiovarero explained the procedure for a public hearing saying that he would ask for questions for clarification and then ask three times for anyone wishing to speak in favor of the application and then three times for anyone wishing to speak in opposition of the application.

Ms. Jones read the public hearing notice and stated there was proof of publication.

Ms. Bennett gave a brief presentation describing the request and indicated the location.

Mayor Chiovarero asked for questions or comments for the purpose of clarification.

Steve Kossel, 18820 W. Norwood Drive – My understanding from talking to the Alderman earlier today is that R-3 can allow up to two residential housing units per acre. Is that correct?

Ms. Bennett – Two single-family units per acre. The minimum lot size for R-3 is 20,000 square feet. An acre is over 40,000, so 20,000 is just about a half acre for each lot.

Mr. Kossel – Does the current zoning allow for a single?

Ms. Bennett – R1/R-2 is the current zoning and that is a five acre minimum.

Mr. Kossel- The other thing that I am concerned about is the buildable land here is very minimal and it is very close to the street, so at what point in time would the setback be taken into consideration in terms of how close this would be set to the street?

Ms. Bennett – That would be reviewed as part of the land division. That item is tabled this evening, but it will be on the January 4th Plan Commission agenda. At that time the Plan Commission will look at setbacks and the wetland setback as well.

Mr. Kossel – So, what you are telling me is that the only way for them to get to the three lots, is to zone it in such a way that would allow up to ten units on those properties because it is five acres. Is that correct?

Ms. Bennett – They are proposing three lots.

Mr. Kossel – I know they are proposing three, but the zoning would allow potentially up to ten.

Ms. Bennett – 3.57 acres is proposed to be wetland and you can't build in a wetland area.

Mr. Kossel – What is actually the acreage of the non-wetlands?

Ms. Bennett – (Referring to the map) This is the proposed boundary for the wetland based on the field delineation. There is 4.57 acres total and 3.63 acres of wetland area. We also have building setbacks and setbacks from the wetlands to meet. This would be the buildable area. R-3 requires a minimum setback of 50 feet.

Ms. Kossel – So, there is actually only about one acre total buildable?

Ms. Bennett – That is correct.

Mike Tyskiowicz, 1521 S. Norwood Drive – The comment was that this is not part of an existing subdivision. There are homes on either side of this lot that are one acre lots and their homes will be impacted by, as I see it, possibly eight homes there. If that is over four and a half acres, you could put eight homes there. From what I am seeing, we could have a nice subdivision that we have now with everybody having an acre lot, and turn the corner and there are eight homes along the road. They are going to be close. I want to go on record saying I am very opposed to this.

Ms. Bennett – If I could just clarify the one point. They are proposing three lots, that would be three homes. You can only have one single-family home per lot.

Mr. Tyskiowicz – Is it an acre lot?

Ms. Bennett – Two of them are an acre and a half, 1.50. This will be part of the discussion for the land division. You can only have one home per lot.

Mr. Tyskiowicz – Three homes would be the maximum?

Ms. Bennett – Provided this is approved.

Mr. Tyskiowicz – What is the next step before this is approved? Will it be approved tonight?

Mayor Chiovatero – There is no action tonight. Tonight is just a public hearing to get comments and questions and give information to the public. The action will take place at the next Plan Commission meeting on January 4, 2010.

Michael Roman, 19750 W. Observatory Road – I used to own the property that abuts us on Greenfield Avenue, 18715 W. Greenfield Avenue. At the time when I did own it, it was 14 acres. With three years of effort I was able to get the land split in two and I had to meet the five acre minimum. With 14 acres I got just two lots. What makes this different from my property which is right next door? Especially since it is not part of an existing subdivision? Is this selective enforcement of the rules, or what?

Mayor Chiovatero – That is a zoning issue, can you clarify that Nikki?

Ms. Jones – It is part of the due process, this applicant has met with staff, we have informed them of the rules and regulations for these zoning districts, and they have pursued coming forward. We are required to review their application. Ultimately, what happens with this application as you well know, is we would be reviewing it by the code and making recommendations next month to the Plan Commission based on what the Zoning Code states.

Mayor Chiovatero – Each individual property is looked at separately based on what the applicant applies for. They may be applying for a zoning that is not capable of happening, but they have the right to apply. They also have a right to make their case in front of the Plan Commission. It is up to the Plan Commissioners to approve or disapprove. That is how the process works.

Robert Matola, 18930 W. Norwood – I have two properties. They are both across the street from here. I am wondering what the impact will be on the setback for the development of my vacant lot. Will it change the setback on my lot that is fully buildable? It is one of the last lots in that neighborhood.

Mayor Chioivatero – Where are you located?

Mr. Matola – Right across the street. (Mr. Matola indicated the location of the lots on the map)

Mayor Chioivatero - This will have no bearing on your property what-so-ever.

Mr. Matola – I have an interest in 44 acres on the end of Norwood Drive. I have already talked to Mr. Seidl and have been told that I can only divide that property into five acre parcels. Will this affect that also?

Mayor Chioivatero – He probably gave you that answer based on the zoning because it is zoned for five acre parcels right now. This rezoning will not have any affect on any other property accept what is within the yellow lines. (Mayor Chioivatero referred to the map)

Mr. Matola – My property on the end of Norwood actually sits higher than these properties are with the C-2 zoning. My property also has a C-2 zoning on it.

Mayor Chioivatero – If you were going to do something with your property in the future, that would be an application you would have to do and the staff would have to look at the zoning and all the issues with the C-2 and see how it could be divided if that was your desire.

Mr. Matola – Thank you.

Denise Doege, 19120 W. Southview Lane – I live at the tip of where this could be impacting. How will this potential rezoning and the potential split that may come from that fall in on the Master Plan that the City of New Berlin is working on or has completed?

Mayor Chioivatero – At this time, if I recall this property was not rezoned in the Master Plan. It is probably currently zoned as residential.

Ms. Jones – Right, there were no Future Land Use changes for this area.

Ms. Doege – Is there other not-built-on land in the City of New Berlin with the five acres minimum or are different areas zoned differently?

Mayor Chioivatero – Different areas in the City are zoned differently. It is based on where they are located and what zoning has been placed on that property when it was platted.

Ms. Doege – In the areas that are surrounding this, as Mr. Matola just stated and the other gentleman who owns property, is the majority of what is around this area, R-1, R-2, or R-3?

Ms. Jones – If you look at our Zoning Map, that subdivision is R-1/R-2, Single-Family Residential. You are surrounded on the other side by the Sod Farm to the south.

Ms. Doege – In proximity to this location, can you tell me where the closest R-3 is?

Ms. Jones – I don't have an electronic version of our Zoning Map down here, but we would be happy to supply you with that information.

Ms. Doege – Ok, I think it is important to know where the closest R-3 is, and if it fits in with the general tenor of the neighborhood. While this is not in the established pre-platted subdivision, I

think we all recognize that this area is significantly different than other areas. There are two means of egress into this subdivision. I have talked with several neighbors and our fear is higher traffic and things. I realize it is one step at a time, but it is a slippery slope. If there are no other existing R-3's within a significant distance of this property, I would have to say that I think the zoning is inappropriate.

Mayor Chiovero – Again, I will state that the applicant has a right to ask for zoning. That is what this process is right now. They are probably listening to your concerns as well as the Plan Commission is as well as staff. That is what we do, we work through those issues and go from there. Feel free to look at that Zoning Map in the back corner.

Ms. Doege – Ok, thank you.

Citizen - Could you please tell me exactly what R-3 and C-2 mean. What can I build on an R-3 and a C-2 that I can't do on R-1 and R-2?

Ms. Bennett – I will read the description of R-3, but we do have a table in our Zoning Code that I would be happy to provide to you that has a list of prohibited and allowed uses and conditional uses within those districts. "The definition of R-3 Suburban Single-Family Residential District is intended to provide for single-family residential development at densities not to exceed two dwelling unit per net acre. This District is further intended to be used for residentially platted lots already existing at the time of the adoption of this chapter and so identified for the density range on the adopted City Master Plan or component thereof. Suburban Residential lots are served by private on site sewage disposal systems and private wells".

C-2 is our Shoreland Wetland District. That is for areas that have been delineated as wetland. This applicant has done the field delineation to determine the accurate boundary of the wetland. That description for that is, "the purpose of the C-2 Shoreland Wetland District is intended to preserve, protect, and enhance the ponds, streams, and wetland areas of the City of New Berlin. The preservation, protection, and enhancement of these areas will serve to maintain safe and healthful conditions, maintain and improve water quality both ground and surface, prevent flood damage, control storm water runoff, protect stream banks from erosion, protect groundwater recharge and discharge areas, protect wildlife habitat, protect native plant communities, avoid the locations of structures on soils which generally are not suitable for use, and protect the water based recreation resources of the City".

Mayor Chiovero – To answer your questions, no.

Mayor Chiovero asked for further questions or comments for the purpose of clarification, seeing none.

Mayor Chiovero asked if there was anyone wishing to speak in favor of this application.

Tim Lynch, RSV Engineering, Inc. – I wanted to point out that when talking with staff, we went back and forth on whether or not a rezone was appropriate here given that what we were really trying to do is add some lots to this parcel that fit in with the neighboring community. The adjacent properties as part of that subdivision are R-1/R-2 which is a five acre size now but you can see they are all an acre and a half or smaller out there. What we have proposed is actually lot sizes that are on average larger than the neighboring parcels. We are trying to get something that fits into the neighborhood. In consultation with staff, we came to the conclusion that the best way to do that would be to rezone it to R-3 so it would be in compliance with the Zoning Code and be able to move forward with it. In questioning why we are asking for the rezone to R-3, that is the reason we are doing that. We are looking to get something to fit in there. The property owner is looking to be able to put this to rest. He has been working on this for a while now. I just wanted to speak in favor and answer any other questions that people might have.

Jennifer Buzzell, applicant – I don't want commercial buildings. I don't want apartments. I want

three lots. The reason I am applying for it is I had bought the lot originally for my husband and I to build a house. He has lost his job in the last year, so we are trying to divide it and sell it for what we owe on it. We want to keep it with the rest of the subdivision. We are not trying to encroach on anyone's land, or ruin anything, cut down trees or any of the like. We want to keep the conservation lands, conservation and do everything within the guidelines of the subdivision. We are basically the only small chunk that is not included in the subdivision. I'm trying to stick with having larger lots like Greenfield Acres. If you have any questions, you can ask me. Thank you.

Mayor Chiovero asked three times if there was anyone else wishing to speak in favor of this application, seeing none.

Mayor Chiovero asked if there was anyone wishing to speak in opposition of this application.

Michael Roman, 19750 W. Observatory Road – I would like to address Mr. Lynch. What he is proposing to do is to revive the old adjacency rule for land next to subdivisions. I tried that on my land and I hate to have this all about me, but I was denied. This is an insult to the efforts that I put forth years ago and was flatly denied by the Plan Commission at that time. As I stated before, the rules are the rules. Everybody has to obey them. I did, and I think everybody else should too. Thank you.

Mary Ann Reed, 19011 W. Pinecrest Lane – I don't know if anybody brought up the restrictions on our Greenfield Acres, but the seventh one is the premises shall not be subdivided or re-subdivided so as to provide a land area of less than one acre for each principle building and it's appropriate garage or garages. This is updated year after year unless someone decides to change it. What bothers me, Mayor Gatzke some years back I heard proposed if the Sod Farm was up for sale putting offices or the like on that property, he was going to take it down to Lincoln Avenue, close off Lincoln Avenue, have traffic veer over to Calhoun Road. I know when I went for signatures for people running for office, that the Sod Farm gentleman had given thoughts to selling, not particularly at that time, but he had thoughts of it. What concerns me, this butts up against, near, around, and close to the Sod Farm. Now, if they chose to develop that Sod Farm, how would that affect Greenfield Acres and the egress and ingress to that property? I know they do have a road going into the Sod Farm, and sometimes the Sod Farm uses our road to haul out rolled up sod, but if there is ever a kink in the armor, that commercial property, and I understand R-3 is commercial property, that would open the door to possibly having problems in our subdivision, maybe with the purchase with the homes along there, I'm not sure.

Mayor Chiovero – R-3 is Single-Family Residential.

Ms. Reed – I'm not up to speed on that, but anyhow if someone has deep pockets, they can buy up those homes along there because going down to the south they are what used to be termed "electric homes". They have no basements. They might be conducive to selling if they used it down the road and the Sod Farm sold for other than homes, which would affect our subdivision. Personally, I am not at all in favor of allowing it to be changed from the regulations we have on properties we have for homes now. Thank you.

Steve Kossel, 18820 W. Norwood Drive – I am opposed to this as it is currently worded with all due respect to Ms. Buzzell, once she sells it and it is zoned R-3, the Developer can do whatever he wants with it. He can put as many units on there as he wants regardless of what happens. Can you go back to the map with the numbers on it, please? At this point, there is only one acre of buildable land here so even at R-3 there should only be two units along that road anyway. Those are the reasons that I am against it. If it ever does develop, as long as it fits in with the neighborhood, has appropriate setbacks similar to the other homes in the neighborhood, similar lot sizes, lot size not including wetland that might be reasonable, but under it's current wording rezoning to R-3 I don't think is appropriate.

Vernon Bentley, 3450 S. Johnson Road – I realize that this is an application and you have to

review it, but in the past there was a three lot land division on Coffee Road next to the Cari Adams Subdivision that was denied. There was a ten acre, one acre lot land division at the west side of Horizon that was also denied and has been divided into two 5-acre lots. I think you are opening the door. This is not part of an infill in the subdivision, and it should stay with R-1/R-2. Because of the other denials, I am against this too. I don't live up there and I'm not involved in it, but I like consistency in the City. I mentioned several times about the Codes and Ordinances being guidelines and this is exactly what they are, so I am against it. Anyone else that is against it in this room should come up and give their name and address and have it documented that they are not in favor of it. Thank you.

Mike Tyskiowicz, 1521 S. Norwood Drive – I am opposed to this. I would prefer if someone builds there, it is a single home on a five acre plus lot and not subdivided. Thank you.

Marcia Roman, 19750 W. Observatory Road – We keep talking about five acre parcels. This is 4.43 acres. I am wondering how a person can build if it is required to have a five acre parcel? I am objecting to it also. Thank you.

Vernon Bentley, 3450 S. Johnson Road – I would like to clarify that since staff didn't. We have some subdivisions in my area that are five acre density, but actually are 4.6 acres, so I am sure this could be developed as a one lot property even though it is under five acres.

Judy Botterud, 19301 W. Southview Lane – I am against this also. Thank you.

Joe Wentz, 19430 W. Southview Lane – Under the current language that they are proposing, I am also against this. I see this is doing nothing but devaluing our properties in our subdivision. We moved there for a reason and we like what we have.

Mr. Christel asked three times if there was anyone else wishing to speak in opposition of this application, seeing none.

Mr. Christel asked for comments or questions from the Plan Commissioners.

Alderman Ament – Just a point for anyone wondering when this would happen, it is scheduled for January 4, 2010 Plan Commission meeting. I assume if it is approved or denied there, the recommendation would go to Council for the January 12, 2010 Common Council meeting.

I have one question. The Future Land Use Map, according to the staff report shows this as Suburban Residential?

Ms. Bennett – Correct.

Alderman Ament – How will that be looked at as far as the Comprehensive Plan?

Ms. Bennett – It is Suburban Residential in the Comprehensive Plan. If you look in the staff report, the description of Suburban Residential requires new development may occur as infill development, but not expansions to existing subdivisions. Infill development is development of vacant lots within existing subdivisions, but it is Suburban Residential.

Alderman Ament – I am just wondering how that will play out in the Comprehensive Plan as far as Future Land Use because looking at all of the issues under findings, I don't see how this rezoning could get approved. It seems strange that the Future Land Use Map would call for that if it is not applicable for that parcel.

Mayor Chiovarero asked for further comments or questions from the Plan Commissioners, seeing none.

Mayor Chiovarero closed the public hearing at 6:34 P.M.

**NEW BERLIN PLAN COMMISSION
DECEMBER 7, 2009
MINUTES**

PRIVILEGE OF THE FLOOR

The Plan Commission Meeting was called to order by Mayor Chiovatero at 6:34 P.M.

In attendance were Mayor Chiovatero, Mr. Sisson, Mr. Christel, Alderman Ament, Ms. Broge, and Ms. Groeschel. Also present were Nikki Jones, Planning Services Manager; Jessica Titel, Associate Planner; Amy Bennett, Associate Planner; and Mark Blum, City Attorney. Mr. Felda was excused.

Motion by Mr. Sisson to approve the Plan Commission minutes of November 2, 2009. Seconded by Mr. Christel. Motion passes with Ms. Broge voting present.

PLAN COMMISSION SECRETARY'S REPORT – The Comprehensive Plan will be taken up at the Common Council meeting on December 8, 2009 for possible adoption.

CONTINUED BUSINESS

1. (4)NJ UA-09-50 Dr. Philip G. Conrardy M.D.,S.C. – 19550 W. College Ave. – Grading Plan for Fill. (Tabled 11/2/09)

Motion by Mr. Christel to approve the after-the-fact site grading and filling plan located at 19550 W. College Avenue subject to the application, plans on file, and the following conditions:

- 1) Per Section 275-37B(4)(b) of the Zoning Code, applicant shall submit a rezoning application and appropriate fees to the City of New Berlin by January 30, 2010 in order for the City to update the Zoning Map to correctly identify where the wetland boundary has been field verified.
- 2) Applicant shall verify if any of the filling and grading site work went over the property line of the adjacent neighbor. Any fill on the adjacent property shall be removed.
- 3) Applicant shall adhere to all necessary permits required by the WDNR prior to any future work at this site. Any future filling and grading at this site will require approval by the Plan Commission prior to commencement of any grading and filling.
- 4) Applicant shall follow Section 275-55A(4)(b), which states "fill shall consist of satisfactory soil, stone, gravel or other acceptable materials, which is of a character and quality satisfactory of the purpose intended. The material shall be free from sod, stumps, logs or other organic matter, all types of refuse including construction refuse, fragments of concrete larger than two feet in a dimension and other such material in the judgment of the Director as unsuitable."
- 5) No additional clearing, grubbing, grading or filling until a zoning permit has been issued.
- 6) Erosion control permit and erosion control measures shall be applied for, approved, permitted, installed and inspected. Erosion control measures shall remain in place until the site is stabilized.

Seconded by Mr. Sisson. Motion carried unanimously.

NEW BUSINESS

2. (3)AB LD-09-07 Buzzell – Approx. 18845 W. Norwood Dr. – Ne ¼ Sec. 5 -Three-Lot Land Division.

Motion by Alderman Ament to table the request for a three-lot land division at 18845 W. Norwood Drive per the applicants request. Seconded by Ms. Broge. Motion carried unanimously.

3. (7)JT UA-09-62 Arch Aluminum & Glass – 5700 S. Moorland Rd. – Outside Storage of Metal Racks and Shelves.

Motion by Mr. Sisson to approve the request by Arch Aluminum & Glass for outdoor storage located at 5700 S. Moorland Road subject to the application, plans on file and the following conditions:

- 1) Plan of Operation - Applicant is proposing an area for outdoor storage behind the existing building.
- 2) To the maximum extent possible, the outdoor storage area shall be screened from view of the public right-of-way.
- 3) Materials stored outdoors shall be placed on a paved surface.
- 4) Outdoor storage areas shall be limited to the area shown on the submitted plans.
- 5) Storage of materials shall not interfere with circulation patterns and/or emergency vehicle access.

Seconded by Mr. Christel. Motion carried unanimously.

4. (7)JT UA-09-65 Engineered Security Solutions, Inc. – 16805 W. Observatory Rd. – Reoccupancy and Parking Waiver.

Motion by Mr. Christel to approve the re-occupancy of an existing building for an office tenant, conversion of a building from a single tenant to two tenants and Waiver Request #1 located at 16805 W. Observatory Road subject to the application, plans on file and the following conditions:

Waiver Request #1: Applicant is requesting a parking waiver from Section 275-57.A(3), which requires 10 parking stalls on this property. The site currently has 8 parking stalls.

- 1) Plan of operation shall be consistent with submitted plans on file.
 - a) The applicant will be a second tenant in this building. The existing tenant will remain.
 - b) Hours of Operation: 8:00 AM to 5:00 PM, Monday through Friday
 - c) Number of Employees: approximately 8
- 2) Any future building additions or site alterations may require the removal of one of the access points.
- 3) Any parking areas that need to be re-stripped or broken paved areas shall be repaired by June 1, 2010.
- 4) Employee and customer parking shall be contained on site. No on-street parking allowed on National Avenue or Observatory Road.
- 5) No outdoor storage allowed.
- 6) Dumpsters shall be properly screened from the street and public view in accordance with Article VIII Section 275-56 of the New Berlin Municipal Ordinance.
- 7) Each future tenant will require a re-occupancy permit. Approval will be based, in part, on available parking as each tenant applies for occupancy.
- 8) Signage shall require a separate application and issuance of a Sign Permit prior to fabrication and installation.
- 9) All temporary signs shall also require an application to be filed prior to installation.
- 10) A site visit will be performed after issuance of the Zoning Permit. Per Section 275-53B(1)(11) All existing nonconformities and outstanding code violations shall be identified, resolved, and remedied by the deadline dates.

- 11) Apply and obtain appropriate building, plumbing and electric permits. Plans shall be stamped by a licensed architect or professional engineer per Wisconsin Enrolled Commercial Building Code. (Comm61.31) Plans shall be approved by the City of New Berlin Department of Community Development Inspection Division per (Comm. 61.70) The building shall be fully accessible from the parking lot to the interior elements (Comm. 63.1101 and ICC/ANSI A117.1).
- 12) The newly created restroom shall meet the requirements of ANSI A117.1

Seconded by Alderman Ament. Motion carried unanimously.

5. (1)NJ UA-09-60 AMS Hair Design – 1627 S. 124th St. – Canopy and Enclosure.

Motion by Alderman Ament to approve the construction of a new awning enclosure onto a legal non-conforming commercial building along with wavier request #1 located at 1627 S. 124th Street subject to the application, plans on file and the following conditions:

Waiver Request #1: Applicant requests a waiver from Section 275-611(1)b, "A marquee or canopy may extend up to 12 feet beyond the building to which it is affixed but shall not extend into a required front yard, side yard, or rear yard, nor shall it extend closer than one foot to the vertical plane formed by the curblin in a shopping center." The applicant is proposing to replace the existing awning with a new canvas awning with sides; however it will not encroach any further into the setback than the existing awning and entry door area.

- 1) The awning enclosure addition shall be constructed in the location depicted on the plans on file.
- 2) Applicant shall apply for and obtain appropriate building and electrical permits.
- 3) The canopy shall meet the requirements of the Commercial Building Code, Comm. 3105 and Comm. 1607.11.2.4
- 4) Plans shall be approved by the City of New Berlin Department of Community Development Inspection Division per (Comm. 61.70).

Seconded by Sisson. Motion carried unanimously.

COMMUNICATION

6. Communication To: Plan Commission
Communication From: Greg Kessler, Director of Community Development
RE: Plan Commissioners Journal, Fall 2009

Plan Commissioners acknowledged receipt of this communication.

ADJOURN

Motion by Mr. Sisson to adjourn the Plan Commission meeting at 7:06 P.M. Seconded by Alderman Ament. Motion carried unanimously.