

PUBLIC HEARING

6:00 P.M. (2)AB RZ-09-02(2) Pro Health Care National Regency – 13700-13900 W. National Ave. and 13755 W. Fieldpointe Dr. – PUD Text Amendment.

NEW BERLIN PLAN COMMISSION

JULY 6, 2009

MINUTES

The public hearing relative to the PUD Text Amendment for the property at 13700-13900 W. National Avenue and 13755 W. Fieldpointe Drive petitioned by Matthew T. Wade c/o Pro Health Care was called to order by Mayor Chiovarero at 6:00 P.M.

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

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. Jones gave a brief presentation describing the request and indicated the location.

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

John Harris, 13600 W. Fountain Court – What will this do to the drainage coming down to the condos? We are getting flooded basements and our creek went over.

Mayor Chiovarero – Nothing at all is going to change on the site. This is just a text change within the PUD Amendment. Nothing is going to change except an invisible property line.

Mr. Harris – When they built that other Regency, we started to get flooding.

Mayor Chiovarero – Have you contacted either my office or the storm water office at the City Hall?

Mr. Harris – I think Jim, our condo president, has.

Mayor Chiovarero – Yes, I think he has. If I remember there was something about an

eroding pipe also.

Mr. Harris – I don't know about any pipe, but I know that during the last rain storm, it came up on the grass. That is how high it got.

Mayor Chiovaturo – This change tonight has nothing to do with storm water drainage.

Mayor Chiovaturo asked three times for further questions or comments for the purpose of clarification, seeing none.

Mayor Chiovaturo asked three times if there was anyone who wished to speak in favor of this application, seeing none.

Mayor Chiovaturo asked three times if there was anyone who wished to speak in opposition of this application, seeing none.

Mayor Chiovaturo asked for comments or questions from the Plan Commissioners.

Alderman Ament – I realize the ProHealth Care owns all of it, but is that a separate lot that separates the Nova Parking lot? Is the Linden Grove in purple? (Alderman Ament referred to the map).

Ms. Jones – This yellow portion is Linden Grove. This is National Regency. This little piece is the Nova part, and this piece is the Medical Office Building on the corner. (Ms. Jones referred to the map).

Alderman Ament – It would be between National Regency and Nova?

Ms. Jones – It is right here (Ms. Jones referred to the map) This application goes hand in hand with the land division which shifts that line.

Alderman Ament – Any changes would be within National Regency's section?

Ms. Titel – Currently, right now.

Ms. Jones – Yes. The yellow line goes here, and the land division we are looking at later pushes this line further to the north. (Ms. Jones referred to the map).

Alderman Ament – Unless they did a land division, they couldn't sell off the purple section from the green section? (Alderman Ament referred to the map).

Ms. Jones – I believe the idea is that they want to make sure that this property has adequate parking, and this property has adequate parking also. (Ms. Jones referred to the map).

Ms. Titel – The accessory building goes with Linden Grove.

Ms. Jones – Let me show the land division to make it clearer. (Ms. Jones showed this on the map).

Ms. Titel – This is the Nova office building parcel. The property line is moving north. Here is the accessory building. They are just moving the lot lines in between the two parcels. (Ms. Titel referred to the map).

Alderman Ament – The only reason I am asking is because, if they sold one of those lots, then I would be concerned about the zero setback for the parking lot, but it is all within the same parcel?

Ms. Jones – There are four separate parcels now and if they go through with the land division, there are four separate parcels at the end. They are trying to make sure that between the internal lot lines, no matter who owns it, there may or may not be a zero setback.

Alderman Ament – I am just trying to make sure that if these parking lots are basically connected and we are being asked to approve this with a zero setback, if one of those parcels would be sold, what would that do to the zero setback? Would it create something non-conforming or would we have any issues with it in the future? If it does, are we better off putting in a condition that if that is sold, that they would have to restore the setback?

Matt Wade, Pro Health Care – Nikki, could you flip back to the colored rendering? Looking at that is the easiest way to describe what we are doing. We are taking the property that is outlined in purple and green which are under the National Regency ownership, and taking the back parking lot area of the old New Berlin Hospital and suggesting tying a portion of that to the Nova Building, because the Nova parking lot on the south side is too small for that building to meet current parking requirements. Then we are taking the purple portion of it and suggesting that it more appropriately be tied to the property that is owned by Linden Grove or the gold color on the map. We are taking the small piece of what is currently National Regency property and dividing it between Linden Grove and the Nova Building. The other piece of this that we are modifying as part of the four CSM's as you have heard described. We are taking a small section of the land owned by National Regency highlighted on the left hand side of the page in green, and adding it to the existing clinic parcel which is identified in blue and making that side a little bigger. Under the PUD agreement we have the opportunity to modify the property lines within the 27 acre piece as long as it is just transferring under the Pro Health Care umbrella. We are just modifying the lot lines to make the land more attributable to the buildings.

Alderman Ament – I understand what you are doing and why, I just want to make sure that we are not putting ourselves in a box later on. You are asking for a zero setback, and my concern is that if somewhere in the future one or both of those parcels would change hands, do we have any issues with not having a setback for the parking lot?

City Attorney Blum – As a practical matter, the terms of the PUD set forth both the

structures and uses that would be permitted within the bounds of the PUD. While technically it is possible for a sale of these individual lots to a third party, practically speaking, although I have not reviewed the PUD, I imagine the PUD refers to both use and also the structures that would be there, so for purposes for someone wanting to come in and wanting to use it for something else, there would be a requirement for a PUD Amendment to make use of it for some other purpose. There is one protection. Absent that, assuming they would be able to sell off the lot and still use it within the terms of the PUD, it would be sold with the zero setback and it would be legal under the terms of this PUD Ordinance for that condition to exist. That is not likely given the way the PUD is set up.

Alderman Ament – OK. If we are comfortable with that, I am good.

Mayor Chiovaturo asked for further comments from the Commissioners, seeing none.

Mayor Chiovaturo closed the public hearing.

NEW BERLIN PLAN COMMISSION

JULY 6, 2009

MINUTES

PRIVILEGE OF THE FLOOR

The Plan Commission Meeting was called to order by Mayor Chiovero at 6:20 P.M.

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

Motion by Mr. Sisson to approve the Plan Commission minutes from June 1, 2009. Seconded by Mr. Christel. Motion carried unanimously.

PLAN COMMISSION SECRETARY'S REPORT - none

CONTINUED BUSINESS

1. () GK PG-516 Comprehensive Plan Update

At the last Comprehensive Steering Sub-Committee meeting held on June 24, 2009 the Utility Plan was reviewed and approved and a copy will be on the website shortly. The Plan describes the waste water and water distribution utilities for the City. The document provides a history of all the utility has done to date, and all the improvements that have been made over time. It summarizes the Urban Service Area Boundary, it identifies local water supplies and systems, and provides a review of all the utilities statistics. It defines water conservation measures that have been established and new ideas for the future.

The Transportation Plan was also discussed at that meeting. The Plan contains an inventory of all of New Berlin's existing transportation and an assessment of transportation needs. It contains descriptions of the state, county, regional, and municipal plans applicable to transportation planning in New Berlin including reference to SEWRPC 2035 Plan and other documents. An analysis of the relationship between these areas and other plans in New Berlin's transportation needs. It goes over the goals, objectives and policies in the recommended programs, which is part of the Smart Growth requirement. It also incorporates the Bicycle and Pedestrian Plan which used to be a separate document. The trail maps and any segments have been updated. The major change is that some of them were off road through areas that were not possible. So now they will be provided for on road.

The Intergovernmental Plan was discussed. It looks at establishing cooperative planning with surrounding communities and encourages coordination and cooperation

among nearby units of government, working with adjacent communities and government agencies to resolve land use and other development issues, recognizing the various regional plans in the area and how they impact the City as well as others.

The next Comprehensive Steering Sub-Committee meeting is August 5, 2009 from 4:00 – 8:30 P.M. at the City Hall. The Code Committee will be meeting July 16 and 30, 2009 from 1:00 – 4:00 P.M. in the Badger Conference Room to look at Zoning Cope updates. The Open Houses are scheduled for September 9 and 10, 2009 from 5:00 – 8:00 P.M. in the Council Chambers at City Hall. The tentative date for the Public Hearing is October 5, 2009 here at City Hall.

NEW BUSINESS

2. (4)JT CU-09-02 Spa Paw & Tail – 5055 S. Emmer Dr. – Full Service Pet Center. (Public Hearing 6/1/09)

Motion by Alderman Ament to approve the Conditional Use permit for Spa, Paw & Tail to operate a pet resort and day camp located at 5055 S. Emmer Drive subject to the application, plans on file and the following conditions:

- 1) Planning:
 - a) General Plan of Operation:
Hours of Operation: 7:00 AM – 6:30 PM, Monday through Friday.
 - Facility will be closed to the public on weekends, but employees will be present.
 - Staff Hours: 6:45 AM – 7:00 PM and 11:00PM – 12:00 AM boarding staff shift.
 Operations of the business include:
 - Day care for dogs and cats
 - Retail sales of pet related items
 - Grooming
 - Overnight boarding services
 - b) All customer and employee parking shall be contained on site.
 - c) Applicant shall not deviate from the submitted Plan of Operation. Any changes to the plan of operation shall require DCD approval.
 - d) The rain garden shall be completed no later than September 30, 2009. Staff may grant an extension, if necessary.
 - e) This facility shall be limited to 85 dogs maximum per night for overnight stays and shall be limited to 100 dogs maximum for day care.
 - f) All waste shall be kept in a closed container until removed from the property.
- 2) Stormwater:
 - a) Solid waste in the outside play yard area shall be picked up by the end of each day.

- b) The play/bathroom area shall be grassed, if bare spots develop they shall be restored to grass. If grass is not able to be sustained, alternative ground cover can be used, but will require DCD approval.
 - c) A rain garden is being constructed to capture any runoff from the outdoor play yard. A Stormwater Maintenance Agreement shall be required for the rain garden.
- 3) Inspection:
- a) Building plans shall be signed and stamped by a licensed architect or professional engineer per the Wisconsin Enrolled Commercial Building Code. (Comm.61.31).
 - b) Building plans shall be approved by the State of Wisconsin Dept. of Commerce Safety and Buildings Division. (Comm. 61.70).
 - c) Apply and obtain appropriate building, electric and plumbing permits.
 - d) The building shall be fully accessible from the parking lot to the interior elements (Comm. 63.1101 and ICC/ANSI A117.1).

Seconded by Ms. Broge. Motion carried unanimously.

3. (2)AB RZ-09-02 Pro Health Care National Regency – 13700-13900 W. National Ave. and 13755 W. Fieldpointe Dr. – Rezone from I-1 and I-1/PUD to I-1/PUD. (Public Hearing 6/1/09)

Motion by Alderman Ament to remove this item from the agenda due to the fact that the rezoning was approved by the Common Council February 10, 2004 and the Zoning Map to be updated to reflect the correct zoning classification.

Seconded by Mr. Christel. Motion carried unanimously.

4. (2)AB RZ-09-02(2) Pro Health Care National Regency – 13700-13900 W. National Ave. and 13755 W. Fieldpointe Dr. – PUD Text Amendment.

Motion by Mr. Christel to recommend to Common Council adoption of an ordinance that approves the PUD (Ordinance #2132) text amendment to add a statement under Area 2, I-1/PUD ProHealth Care, Inc. Campus, (6) Setback and Width, (h) “The 5’ setback for parking areas, including aisles, may be reduced to zero (0) feet from internal lot lines” for the properties located at approximately 13700-13900 W. National Avenue and 13755 W. Fieldpointe Drive.

Seconded by Mr. Felda. Motion carried unanimously.

5. (2)AB LD-09-02 ProHealth Care – 13700-13900 W. National Ave. and 13755 W. Fieldpointe Dr. – Sw ¼ Sec. 12 – Four, One-Lot Land Divisions.

Motion by Alderman Ament to recommend to the Common Council approval of the Four (4), One-lot Certified Survey Maps for the properties located at 13700 – 13900 W. National Avenue and 13755 W. Fieldpointe Drive subject to the application, plans on file and the following three conditions:

- 1) Plan Commission shall act on the PUD Ordinance amendment (*under a separate application request File #: RZ-09-02*) prior to any action on this CSM request.
- 2) General:
 - a) Applicant shall correct all drafting errors and requested changes identified by Staff on the final CSM prior to the City signing.
 - b) A final copy of the CSM shall be submitted and reviewed prior to City signing. All owners and surveyor must sign prior to City signing the CSM. Surveyor Stamp is required.
- 3) All easements shall be shown on the face of the CSM.

Seconded by Mr. Christel. Motion carried unanimously.

6. (4)CT&JT PG-384 Domestic Livestock. – Section 275-41(a)(2) Zoning Code Change – Limitations on Keeping of Livestock & Boarding Facilities – Keeping of Horses. (Tabled 5/4/09)

Motion by Mr. Sisson to forward a request to the Common Council to set a Public Hearing date for the August 3, 2009 Plan Commission meeting regarding the adoption of the amendments to Section 275-41.A(2) (Keeping and Raising of Animals) and 275-70 (Definitions) of the City's Zoning Code.

Seconded by Alderman Ament. Motion carried unanimously.

7. (5)NJ U-5-99 The Preserve at Weatherstone Meadows – Phase II - 4200 S. Cambridge Drive. – Extension of Zoning Permit. Re-approve project.

Motion by Mr. Christel to re-approve the original modifications to the Use, Site, and Architectural Approval for Zoning Permit File #: U-5-99 to modify the site plan and road layout slightly to accommodate a revised layout based on DNR required storm water pond modifications and a wetland field delineation at the property located at 4200 S. Cambridge Drive subject to the application, plans on file, and satisfaction of the following original conditions:

- 1) Planning

- a) Approval of the landscaping plan and payment of all sureties and any tree replacement fees are required prior to issuance of the Zoning Permit. Landscape plans shall meet all the requirements of Article VIII Section 275-53 through 275-56 of the Municipal Ordinance in its entirety. A registered landscape architect shall stamp plans. Landscape plan shall be approved and signed by the Department of Community Development prior to installation of any materials. A tree inventory has been submitted by the applicant. Several average quality trees are planned to be removed. For the trees that cannot be re-planted on the site the applicant shall, at \$300 per tree, provide a landscape donation fee of \$27,000 based on the larger 5" to 7" DBH trees that are being removed. If the applicant wishes to plant additional trees on site, they shall coordinate with Staff.
 - b) Applicant shall coordinate with Staff to add additional language to the Landscape Letter of Credit "maintenance section" that over the 3-year time period if trees identified in "area one" on the Tree Inventory Plan decline in health after the road is constructed, the applicant shall coordinate with Staff to provide additional replacement trees.
 - c) All buildings shall conform to the PUD Ordinance #2108.
 - d) Applicants shall coordinate with the neighbor directly north of Phase I to ensure construction plans address drainage concerns. The revised plans indicate an additional catch basin has been added in this area as well as some swale work.
- 2) Inspection & Engineering
- a) Applicant shall verify fire hydrant spacing in the area between Lot # 25 at the end of the cul-de-sac and building # 18.
 - b) Building plans shall be reviewed under the Wisconsin Uniform Dwelling Code requirements by the New Berlin Inspection Division upon building permit application.
 - c) Apply and obtain appropriate building, plumbing and electrical permits.
 - d) Erosion control shall be approved, permitted, installed and inspected prior to any commencement of site work or issuance of any building permits.
 - e) Stake out survey with setbacks from lot lines shall be submitted with building permit application.
- 3) Engineering
- a) Address all engineering concerns regarding construction details in a letter dated November 21, 2007.
 - b) Utility easements will be required as well as a hold harmless agreement for driveways located in the easement areas (e.g., between buildings #24 and #25).

- c) Applicant shall verify the construction phasing plan. Staff would suggest that you start with building #'s 10, 15, 24 and 38 to minimize disruptions for existing residents and ease in finishing landscaping.
- 4) Storm Water
 - a) All temporary storm sewer associated with the temporary ponds shall be removed.
 - b) Applicant shall follow City Ordinance #2193.
 - c) Please provide a maintenance agreement. This document shall be on file prior to the issuance of the zoning permit.

Seconded by Mr. Felda. Motion carried unanimously.

- 8. (2)JT SG-09-22 Lee's Cleveland Pub & Grill – 14000 W. Cleveland Ave. – Wall Sign.

Motion by Alderman Ament to approve the Request along with Waiver Request #1 for a new wall sign located at 14000 W. Cleveland Avenue subject to the application, plans on file and the following reasons:

WAIVER REQUEST #1: Applicant is requesting a waiver from Section 275-61.I(1)(a) and 275-61.I(2)(c) which states that individual channel lettering is required and that box signs/cabinet signs are prohibited.

- 1) The lettering would be as big or larger then the individual channel lettering.
- 2) For this particular application and the neighborhood it is in, it fits in well, maybe even better then the channel lettering.

Seconded by Sisson. Motion carried unanimously.

- 9. (5)JT SG-09-25 Club Fitness New Berlin – 15805 W. National Ave. – Monument Sign.

Motion by Mr. Christel to deny the request along with Waiver Request #1 for a new monument sign located at 15805 W. National Avenue subject to the application, plans on file and the following reasons:

WAIVER REQUEST #1: Applicant is requesting a waiver from Section 275-61.I(1)(c)[2] which states that monument signs shall not exceed 8 feet in height above the mean lot grade.

- 1) Section 275-61.I(1)(c)[2] of the Zoning Code states: "The monument sign shall not exceed eight feet in overall height above the mean lot grade and shall be set back entirely outside the base setback line". The proposed sign is 8' 9" tall.

- 2) The applicant is proposing to replace the existing sign with a new monument sign. Section 275-61.B(1) states: “No sign shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered, nor shall the face of a sign or color be changed without a sign permit and conforming with the provisions of this chapter.”
- 3) Since the proposed sign exceeds the maximum height allowed, Staff cannot administratively grant approval of the new sign. Section 275-61.D(5) allows the applicant to appeal the decision made by Staff to the Plan Commission for determination.
- 4) 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. Felda. Motion passes with Mr. Felda, Mr. Christel, Mr. Sisson, Ms. Groeschel, Alderman Ament voting Yes, and Ms. Broge, Mayor Chiovaturo voting No.

ADJOURN

Motion by Mr. Sisson to adjourn the Plan Commission meeting at 7:45 P.M. Seconded by Ms. Broge. Motion carried unanimously