

**AGENDA**  
**CITY OF BERLIN PLAN COMMISSION**  
**TUESDAY, OCTOBER 23<sup>RD</sup>, 2018 6:00 P.M.**  
**CITY HALL COUNCIL CHAMBERS**  
**CITY OF BERLIN, WI**

- 1) Call meeting to order - Roll Call
- 2) Public Participation
- 3) Approval of Minutes –Plan Commission Meeting August 28<sup>th</sup>, 2018
- 4) Review and Discuss Conditional Use Permit Ordinance  
Recommendation: Action as Appropriate
- 5) Review and Discuss Temporary and Accessory Structure Ordinance  
Recommendation: Action as Appropriate
- 6) Old Business
- 7) New Business
- 8) Next meeting date – November 27, 2018
- 9) Adjourn

In adherence to the City of Berlin Public Meeting Participation Policy, public participation will be allowed under each agenda item at the discretion of the presiding officer. Attendees must register their intention to participate on either a general comments section or a specific agenda item prior to the meeting by filling out a Registration Card, which can be obtained from the Internet, City Clerk's office or in the City Hall Council Chambers at the podium. Registration Cards should be turned in prior to the meeting to either the presiding officer or City Clerk.

PLEASE CONTACT LINDSEY IF YOU CANNOT ATTEND - (920) 361-5156



**CITY OF BERLIN PLAN COMMISSION MINUTES  
AUGUST 28<sup>TH</sup>, 2018  
CITY OF BERLIN  
BERLIN, WISCONSIN**

The August 28<sup>th</sup>, 2018 City Plan Commission meeting was called to order at 6:00 p.m. by Mayor Schramer. Roll call present were: Mayor Schramer, Bobbie Erdmann, Charlie Beard, Ed Marks, Mary Kubiak, Justin Lindahl and Dave Secora. Also present were Lindsey Kemnitz and Attorney Chier.

First item on the agenda was approval of the July 31<sup>st</sup>, 2018 Plan Commission minutes. Erdmann moved to approve the July 31<sup>st</sup>, 2018 Plan Commission minutes as presented. Kubiak seconded the motion, which was carried by a voice vote.

Mayor Schramer wanted to discuss the CUP for 327 SW Franklin Street first due to Charles Pfrang on the phone. The commission started to discuss the conditional use permit for 327 SW Franklin Street for a 6 foot fence in the front yard setback. Charles Pfrang was on the phone to represent TCG Holdings 5, LLC. Charles explained that the request for the six foot fence in the front yard due to the blighted property on the east side of 327 SW Franklin Street. A letter and photos were provided to the commission of the adjacent property to the east. Marks mentioned people will not be able to see when backing out to the east and also mentioned he vehicle does not fit in the driveway without hanging over the sidewalk. Pfrang stated his vehicle could fit in the driveway without hanging over the sidewalk. Secora thought if people are parking on the west side of the driveway, there should be visibility to back out of the driveway. Attorney Chier mentioned section 82-641 for the considerations for granting the CUP. Attorney Chier said the conditions need to be reasonable, practicable, measurable, and the commission may include conditions such as duration.

Erdmann mentioned shortening the fence length by 2 feet. Lindahl asked if this permit would stay with the property. Attorney Chier stated the Commission can set duration for the permit. Lindahl asked how long it would take the City to clean up the adjacent property. Kemnitz mentioned a letter is sent giving them 30 days and extensions would be given if progress is being made. If there was no progress in the 30 days, citations then would be issued to the property owner. Beard felt a year would be sufficient time for the adjacent property to get cleaned up.

Marks mentioned shortening the fence to 4 feet instead of the 6 feet in height. Kemnitz mentioned then a CUP would not be required. Lindahl felt like the 4 foot fence would not serve the purpose for the applicant. Erdmann made a motion to recommend the CUP for 327 SW Franklin Street for a 6 foot fence in the front yard setbacks that only extends 6 feet from the building for duration of one year to Council for approval. The commission then will review the permit to see if it needs to be extended. The motion was seconded by Beard, the vote had 6 ayes and 1 nay. Motion carried.

The next item on the agenda was the CSM for 537 E. Marquette Street. Kemnitz stated the property owner has passed away and the family is trying to sell the property. They have an interested party in the back part of the property and that is the reason for the CSM. Kemnitz said the property is zoned A-1 with a minimum of five acres. Marks had a question stating the CSM mentioned 3 lots and he only sees 2 lots. Kemnitz said she noticed this issue with the CSM

as well and the surveyor will correct that before recording it at the County. Marks made a motion to recommend the CSM for 537 E. Marquette Street to Council for approval. Lindahl seconded the motion, which was carried by a voice vote.

There was no new or old business.

Marks moved to adjourn at 6:34 p.m. Secora seconded the motion, which carried by voice vote.

*Lindsey Kemnitz, Community Development Director*



Conditional Use Permit & Temporary and Accessory Structure Ordinance Update

October 15, 2018

TO: Plan Commission

FROM: Lindsey Kemnitz

SUBJECT: Ordinance Update

Last month the Commission did not have a quorum so the ones present discussed the conditional use permit ordinance update. Review that for the meeting to discuss. Currently the zoning code has a lot of conditional use permits and we will have to add more specific requirements for each one. Last month there was discuss on keeping the Ag-2 zoning. After review there are 11 parcels in the City that are over the 35 acres that could be zoned to Ag-2. Three of the properties are publicly owned and one property is the hospital. So that leaves 7 parcels that could be zoned Ag-2 in the City limits.

Attached is the update to the temporary and accessory structure ordinance. Review and discuss for the meeting.

Recommendation: Action as appropriate.

ORDINANCE # \_\_\_\_\_

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**AN ORDINANCE AMENDING ZONING REGULATIONS  
RELATING TO TEMPORARY AND ACCESSORY STRUCTURES**

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WHEREAS, the City of Berlin Plan Commission has held a public hearing regarding the ordinance change, as set forth herein, on \_\_\_\_\_; and

WHEREAS, the Plan Commission has recommended to the Common Council the approval of the ordinance change, as set forth herein.

NOW THEREFORE, the Common Council of the City of Berlin do ordain as follows:

Sec. 82-4 of the Code of Ordinances shall be amended as follows:

**Sec. 82-4. – Definitions**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. The word "shall" is mandatory and not permissive.

...

~~*Minor structure* means a small, movable accessory erection or construction such as birdhouses, tool houses, pet houses, play equipment, arbors, walls and fences which are under four feet in height.~~

...

~~*Structure* means anything constructed or erected. The term "structure" shall be construed as though followed by the words "or parts thereof." The term, "structure" shall include any object, including a mobile object, constructed or installed by any person, including but not limited to buildings, walls, fences, towers, cranes, smokestacks, silos, earth formations, poles, overhead electric transmission lines, flag poles, tents, canopies, and carports the use of which requires a permanent location on the ground or attached to something having a permanent location on the ground.~~

...

~~*Structure, permanent* means a structure which requires a permanent location on the ground or attached to something having a permanent location on the ground~~



...

*Structure, temporary* means a structure which is not a permanent structure, movable structure which is not designed for human occupancy, nor for the protection of goods or chattels, and does not form an enclosure, such as billboards.

...

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Sec. 82-22 of the Code of Ordinances shall be amended as follows:

**Sec. 82-22. - Height and yard exceptions.**

...

(7) ~~There shall not be more than one residential building and one accessory building on one lot, except that a small storage building of 100 square feet or less, and one children's play structure, may be permitted in addition the requirements of this subsection.~~

...

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Chapter 82, Article IV of the Code of Ordinances shall be amended as follows:

**ARTICLE IV. - ACCESSORY USES**

**Sec. 82-551. - Building permit required; application.**

Within the city, no owner shall build, construct, use or place any accessory ~~building~~structure, including prefabricated accessory buildings whether a permanent structure or temporary structure, except for (i) walks at ground level, drives at ground level, patios/terraces at ground level, small decorative garden accessories such as decorative pools (not designed for swimming), fountains, statuary, sundials, flag poles, and (ii) structures, such as signs, which already require a special permit from the building inspector under this chapter 82, until a building permit shall have first been obtained from the building inspector. Application for an accessory building permit shall be made in writing to the building inspector. With such application, there shall be submitted a fee pursuant to chapter 14 of this Code, and a complete set of plans and specifications, including a plot plan or drawing which shall accurately show the location of the proposed accessory building structure with respect to adjoining alleys, lot lines and buildings~~other structures~~. If such application meets all requirements of this article, the application shall be approved.

**Comment [M1]:** Just as a note, these exceptions are quite limited in scope. Be aware that things such as tents, canopies, carports, and fences will now all require a permit. If there is a desire to exempt out fences, or any other types of structures, please let me know; however, the idea of the extra permitting is to ensure that equal and fair enforcement of the number, size and setback requirements for all these structures can be ensured.

**Sec. 82-552. - Principal use to be present.**



Except as otherwise provided hereafter, an accessory use or accessory structure in any zoning district shall not be established prior to the principal use or principal structure being present or under construction. On lots of five acres or more in A-1 or A-2 districts, accessory structures may be constructed prior to the principal structure, so long as the accessory structure is consistent with a permitted use for that district. Any accessory use or accessory structure shall conform to the applicable regulations of the district in which it is located, except as specifically otherwise provided in this chapter.

**Sec. 82-553. - Residential district placement restrictions.**

An accessory use or accessory structure in a residential district within the city may be established subject to the following restrictions:

- (1) Accessory building/structure number limits. In addition to the principal building (which includes any attached garage), a detached garage, one additional accessory building-structure (whether a permanent structure or a temporary structure), and four play structures may be placed on a lot. However, the limitation of four play structures per lot shall not be applicable to public parks and playgrounds, schools (excluding home schools) and state licensed daycare centers. Also, there shall no limitation on the number of walks at ground level, drives at ground level, patios/terraces at ground level, small decorative garden accessories such as decorative pools (not designed for swimming), fountains, statuary, sundials, or flag poles.

**Comment [M2]:** Now that all structures are included, including temporary structures, do we want to increase the total number of structures, or alternatively develop some other formula where there is a maximum number of permanent structures and maximum number of temporary structures and perhaps also a maximum number of overall structures? The Commission previously gave me direction to simply treat temporary structures the same as permanent structures for purpose of number and size regulations. I just fear that the new definition of structure is now so broad (to include things as landscaping walls, flagpoles, canopies, tents, carports, fences, transmission poles, etc.), that we may need to adjust the number upward. For example, even ground mounted signs would now be included as a structure, so if a home occupation had a sign, that would count as one of the allowed total structures. I think this is something that may still need a little more thought and discussion.

- (3) Detached accessory buildings/structures.
  - a. Except as provided in subsection 82-22(a) or elsewhere in this chapter, signs, outdoor lighting, and as hereafter provided in relation to detached garages and accessory buildings, detached garages and accessory structures buildings shall not exceed 15 feet in height. However, such 15-foot height restriction may be exceeded for detached garages and accessory buildings if both of the following conditions are met:
    1. The roof pitch of the detached garage or accessory building architecturally matches the roof pitch of the principal structure; and
    2. The height of the detached garage or accessory building does not exceed the height of the principal structure.
  - b. Detached garages and accessory buildings structures (excluding signs, outdoor lighting, fences and play structures – which are all subject to their own special limitations) shall not exceed 900 square feet, except that if there is more than one such detached garage or accessory building structure on a lot, the second such building accessory structure shall not exceed 500 square feet.
  - c. Except as provided in subsection 82-22(b) or elsewhere in this chapter,



~~D~~etached garages or accessory buildings structures (excluding signs, outdoor lighting, fences and play structures – which are all subject to their own special limitations) up to 100 square feet in size shall not be located closer than three feet to any side or rear lot line. ~~Except as provided in subsection 82-22(b) or elsewhere in this chapter, D~~etached garages or accessory buildings structures (excluding signs, outdoor lighting, fences and play structures – which are all subject to their own special limitations) over 100 feet and up to 500 square feet in size shall not be located closer than six feet to any side or rear lot line. ~~Except as provided in subsection 82-22(b) or elsewhere in this chapter, D~~etached garages or accessory buildings structures (excluding signs, outdoor lighting, fences and play structures – which are all subject to their own special limitations) over 500 square feet in size shall have the same side and rear yard setbacks as required in this chapter for the principal structure on such lot.

- d. ~~Except for signs, outdoor lighting, fences, and as provided in subsection 82-22(b) or elsewhere in this chapter, A~~ detached garage or accessory building structure shall not be closer than ten feet to the principal structure, unless the applicable building code regulations in regard to one-hour fire-resistive construction are complied with.
- e. ~~Except for signs, outdoor lighting, fences, and as provided in subsection 82-22(b) or elsewhere in this chapter, D~~etached accessory buildings or structures shall not be located in the front yard of any lot, except that one play structure shall be allowed in the front yard of corner lots which have rear yards of 20 feet or less.
- f. Play structures shall not be located closer than three feet to any lot line.

**Sec. 82-554. - Residential use restrictions.**

Accessory uses or accessory structures in residential districts within the city shall not involve the conduct of any business, trade or industry, except for home occupations as defined in section 82-4. Accessory buildings structures shall not be used for residential purposes human occupancy.

**Sec. 82-555. - Nonresidential district placement restrictions.**

~~Except for signs, fences, and as provided in subsection 82-22(b) or elsewhere in this chapter, A~~an accessory use or accessory structure in a business or manufacturing district may only be established in the rear yard or side yard, and shall not be closer than three feet to any side or rear lot line.

**Sec. 82-556. - Reversed corner lots.**

~~Except for signs, fences, and as provided in subsection 82-22(b) or elsewhere in this chapter, I~~f an accessory structure is located on the rear of a reversed corner lot within the city, it shall not be located beyond the front yard required on the adjacent interior lot to the rear, nor closer than three feet to the side line of the adjacent structure.



**Sec. 82-557. • Landscaping; tents.**

- (a) Accessory vegetation used for landscaping and decorating within the city may be placed in any required yard area. Permitted vegetation shall include trees, shrubs, flowers and gardens.

- (b) ~~Tents may not be used as a dwelling or an accessory structure.~~

**Sec. 82-558. • Temporary uses. Reserved.**

~~Temporary accessory uses within the city, such as real estate sales field offices or shelters for materials and equipment being used in the construction of a permanent structure, may be permitted by the zoning administrator.~~

**Comment [M3]:** I felt this was too vague for enforcement by the zoning administrator. There were no guidelines for the zoning administrator to follow. I think that the zoning administrator's enforcement discretion is sufficient to allow short term deviations from the code for these types of things. Otherwise, if there is a hardship involved, a variance could be applied for.

**Sec. 82-561. • Lawn accessories.**

~~Walks at ground level, drives at ground level, paved patios/terraces at ground level, and decorative garden accessories such as decorative pools (not designed for swimming), fountains, statuary, sundials, flag poles, etc., shall be permitted in setback areas within the city, but shall not be located closer than three feet to an abutting property line, other than a street line.~~

**Sec. 82-563. • Children's ~~p~~Play structures.**

Play structures shall be considered accessory structures, and shall comply with the requirements of this article accordingly. Play structures shall not be used for storage or be constructed out of materials that would constitute a nuisance.

This ordinance shall then take effect the day after publication.

The numeric section numbers and headings shall be subject to modification in the discretion of the codifier, and the approval of the City Attorney, during codification into the City's current Code of Ordinances.

Passed, approved and adopted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ROLL CALL VOTE:

CITY OF BERLIN

\_\_\_\_ AYES  
\_\_\_\_ NAYS

BY: \_\_\_\_\_  
Richard D. Schramer, Mayor

\_\_\_\_\_ ABSENT

APPROVED AS TO FORM:

\_\_\_\_\_  
Matthew G. Chier, City Attorney

ATTEST: \_\_\_\_\_  
Jodie Olson, City Clerk

DRAFT 10-3-2018