

AGENDA
CITY OF BERLIN
PLAN COMMISSION MEETING
TUESDAY FEBURARY 23RD, 2021 6:00 P.M.
CITY HALL COUNCIL CHAMBERS
MEETING IS OPEN TO THE PUBLIC & CITY HALL IS HANDICAPPED ACCESSIBLE
Zoom Link: <https://us02web.zoom.us/j/81481355640>
Call In: 312 626 6799
Meeting ID: 814 8135 5640

- 1) Call meeting to order - Roll Call
- 2) General Public Comments
- 3) Approval of Minutes –Plan Commission Meeting January 26th, 2021
- 4) Public Hearing for Ordinance Correction for Conditional Use Law Changes, A-2 Repeal, R-MH Repeal, & Short Term Residential Rental Regulations. RECOMMENDATION: Recommend to Common Council for approval of the Ordinance Correction for Conditional Use Law Changes, A-2 Repeal, R-MH Repeal, & Short Term Residential Rental Regulations.
- 5) Sign Ordinance Amendment Relating to Multi-Tenant Properties. RECOMMEDNATION: Schedule Public Hearing for March 30th, 2021 Plan Commission Meeting.
- 6) Accessory Structure Ordinance. RECOMMENDATION: Schedule Public Hearing for March 30th, 2021 Plan Commission Meeting.
- 7) Protective Covenants for North Business Park. RECOMMENDATION: Action as Appropriate.
- 8) Old Business (To be used to request items of old business be put on a future agenda for further discussion or action; or used to make a motion for reconsideration of an item from the current meeting or immediately previous meeting; or to make a motion to take items off the table which were laid on the table only during the current meeting.)
- 9) New Business (To be used to request items of new business be put on a future agenda)
- 10) Public Appearances
- 11) Next meeting date –March 30th, 2021
- 12) Adjourn

CITY OF BERLIN PLAN COMMISSION MINUTES
JANUARY 26TH, 2021
CITY OF BERLIN
BERLIN, WISCONSIN

The January 26th, 2021 City Plan Commission meeting was called to order at 6:00 p.m. by acting chairman Erdmann. Roll call present were: Bobbie Erdmann, Ed Marks, Victoria Hill, Dave Secora, Dick Schramer and Mary Kubiak. Also present was Lindsey Kemnitz and Attorney Chier.

Kodi Parker resident of 257 E. Waushara Street is requesting to review the side yard setbacks for accessory structures in AG-1 zoning district. He is looking to put up an accessory structure, but due to the lot being long and narrow the accessory structure would be in the middle of his lot. He stated residential district is only six foot side yard setback, why does Ag-1 have greater setback.

First item was approval of the December 29th, 2020 Plan Commission minutes. Hill and Erdmann had correction in fifth paragraph in the first sentence to add the last name, seventh paragraph last sentence add “an” before acre, eighth paragraph tenth sentence change has to as. Hill moved to approve the December 29th, 2020 Plan Commission minutes as corrected. Marks seconded the motion, which was carried by a voice vote.

Erdmann opened the public hearing for live/work ordinance at 6:06pm. Erdmann asked three times for anyone to speak in favor of the amendment and three times for anyone to speak against the amendment. No one spoke in favor or against the ordinance. The public hearing was closed at 6:07pm. Marks did not see any changes needed. Secora made a motion to recommend the approval of the live/work ordinance to Common Council. Kubiak seconded the motion, which was carried by a voice vote.

The next item was to discuss was correction to ordinance 07-19. Section 82-27(a)(2) was repetitive to section one. Marks agreed and made a motion to schedule public hearing for February Plan Commission. Secora seconded the motion, which was carried by a voice vote.

Loni Meiborg and Greg Lundberg were present from Fortifi Bank for the next discussion on the sign ordinance relating to multi-tenant properties. Greg stated that Fortifi Bank is relocating to 240 Broadway Street and would like to install a 72sq ft freestanding sign. Erdmann asked if the property owner approved of the changes. Greg stated that this afternoon he sent an email to Lindsey from the owner approving of the sign. Schramer suggested amending the ordinance to 25 sq ft per 1,000 sq ft of area per tenant. Marks does not recall discussing multi-tenant buildings when amending the sign ordinance and stated a maximum size needs to be included. Secora mentioned the previous Walmart property that is now being utilized for Tractor Supply and West Side so there are different locations that get repurposed and split up. Hill expressed to have staff look into options and bring something back next month. Marks seconded the motion, which was carried by voice vote.

Jerry Martin spoke about the accessory structure ordinance. Mr. Martin is building a new home on Voyagers Trail and would like to build a 30x40 garage. He suggested to the commission to allow 1,400 sq ft total up to two structures so if someone wanted one garage it could be 1,400 sq ft or two at 700 sq ft each. Attorney Chier drafted an ordinance that allowed larger accessory

structures based on the current ratio of the 500 sq ft and 900 sq ft. Hill expressed the ordinance should state 900 sq ft or 20% green space, greater of the two. Secora asked the commission if we want to allow accessory structures larger than the primary structures. Erdmann did not agree with the architecture matching due to her situation of having an “A” frame home.

Secora thought there was a sliding scale in the ETZA, but did not remember exactly what it was. Marks expressed that there needs to be a maximum allowable size. Erdmann mentioned percentage of the size of lot, but unsure on the maximum sq ft number. Marks suggested maximum 1,400 sq ft up to two buildings. Attorney Chier asked if the accessory structures should exceed the living space of the principal structure. Erdmann stated the structures should be ratio based on land. Marks suggested 1400 sq ft 1 acre or less, 1800 sq ft 1 to 3 acres, 2,000 sq ft 3 plus acres. The board wants to look at examples of structures to determine the allowable sizes. Kemnitz stated she would send an email to the board before next meeting.

Next item was approval of DNR Lease Renewal for Berlin Locks Area. Kemnitz stated that it is a 20 year lease that has expired and needs to be renewed. Erdmann made a motion to recommend approval of the lease to Common Council for approval. Secora seconded the motion, which was carried by voice vote.

No new or old business.

Next meeting date is February 23, 2021.

Marks moved to adjourn at 7:45p.m. Secora seconded the motion, which carried by voice vote.

Lindsey Kemnitz, Community Development Director

AN ORDINANCE CORRECTING AN ERROR IN PREVIOUSLY ADOPTED ORDINANCE 07-19

WHEREAS, Ordinance 07-19 adopted by the Common Council on September 10, 2019 among other things made various amendments to Subsection 82-27(a)) of the Code of Ordinances of the City of Berlin, and

WHEREAS, the Council's intention was that Subsection 82-27(a)(2) was to be repealed, in addition to the creation of the new Subsections (3) and (4), but Ordinance 07-19 as drafted and adopted only included the addition of the new Subsections and failed to show the repeal of Subsection 82-27(a)(2); and

WHEREAS, by this Ordinance, the Council intends to correct that prior error in Ordinance 07-19; and

WHEREAS, the City of Berlin Plan Commission has held a public hearing regarding the ordinance change, as set forth herein, on February 23, 2021; and

WHEREAS, the City of Berlin 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:

Subsection 82-27(a)(2) of the Code of Ordinances of the City of Berlin shall be repealed and subsequent subsections (3) and (4) shall be renumbered to (2) and (3) accordingly.

This ordinance shall then take effect the day after publication.

The numeric section numbers and headings of any portions of the Code of Ordinances affected by this Ordinance 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 _____, 2021.

ROLL CALL VOTE:

____ AYES
____ NAYS
____ ABSENT

CITY OF BERLIN

BY: _____
Richard D. Schramer, Mayor

APPROVED AS TO FORM:

ATTEST: _____
Jodie Olson, City Clerk

Matthew G. Chier, City Attorney

To: Plan Commission

From: Lindsey Kemnitz

Subject: Sign Ordinance Relating to Multi-Tenant Properties

Background:

Attorney Chier has drafted an amendment to the sign ordinance to allow freestanding sign 150 sq ft for multi-tenant properties one acre or less and 200 sq ft for multi-tenant properties greater than one acre. This follows similar language to our existing ordinance for freestanding signs. Researching surrounding communities sign ordinance Berlin is one of highest allowable square footage for freestanding signs, so I don't suggest increasing the total freestanding square footage for single tenant properties. I researched other communities throughout the state for multi-tenant properties and several increased the square footage around 50 sq ft for multi-tenant properties. I did not feel comfortable allowing freestanding signage based on square footage per tenant. The Green Tree Mall or Tractor Supply/West Side would be allowed over 600 sq ft property if we would approve 25 sq ft per 1,000 sq ft. If you allow 70 sq ft per tenant similar to Fortifi Bank's request the Green Tree Mall would have over 600 sq ft total.

Recommendation: Schedule Public Hearing for March Plan Commission Meeting.

**AN ORDINANCE AMENDING THE SIGN CODE
RELATING TO MULTITENANT PROPERTY COMMERCIAL SIGNS**

WHEREAS, the City of Berlin Plan Commission has held a public hearing regarding the ordinance as set forth herein, on [insert applicable date]; and

Comment [MC1]: Will insert when known.

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

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

Figure 82-800b, as contained within Sec. 82-800 of the Code of Ordinances of the City of Berlin, shall be amended as follows:

Figure 82-800b: Permitted Sign Characteristics for Permanent Business Signs by Zoning District

Zoning Districts¹								
	C	R- 1/2	R- 3	INS	B	PUD²	M	A
Permanent Business Sign Group								
Freestanding Sign Category (includes Dual Post, Monument, and Pylon Sign Types)								
Sign Area Calculation	1 square foot of sign area per 1 lineal foot of public right-of-way frontage; or at least 50 square feet per lot ²							
Maximum Area of all Freestanding Signs (per side)	50 sq ft	8 sq ft	25 sq ft	100/150 sq ft <u>or</u> <u>150/200 sq ft³</u>	100/150 sq ft <u>or</u> <u>150/200 sq ft³</u>	100/150 sq ft <u>or</u> <u>150/200 sq ft³</u>	100/150 sq ft <u>or</u> <u>150/200 sq ft³</u>	100 sq ft
Maximum Height - Dual Post or	6 ft	6 ft	6 ft	8 ft	10 ft	10 ft	10ft	6 ft

Zoning Districts ¹								
	C	R-1/2	R-3	INS	B	PUD ²	M	A
Permanent Business Sign Group								
Monument Sign ⁶								
Maximum Height - Pylon Sign	— ⁴	— ⁴	— ⁴	8 ft	25/40 ft ⁴	25/40 ft ⁴	25 ft	— ⁴
Number per Lot	1/2 ⁵							
On-Building Sign Category (includes Awning/Canopy, Marquee, Projecting, Suspended, Wall, and Window Sign, if allowed in a zoning district)								
Maximum Area per Building Facade (except Window)	1 square foot per linear foot of building frontage. Not to exceed 20% of wall area per building facade (or 10% in R1-2 zoning districts).							
Window Signs	There is no limit in the number of Window Signs per lot or per building.							
Daily Notice Sign Category - If allowed in a zoning district, one Daily Notice Sign is permitted per business.								
Bulletin Board Sign (Max Area)	8	— ⁴	8	8	16	16	— ⁴	— ⁴
Bulletin Board Sign (Max Height)	8	— ⁴	8	8	8	8	— ⁴	— ⁴
Drive-Through Sign	Maximum Area: 24 sq ft Maximum Height: 8ft							
Menu Board Sign	Maximum Area: 8 sq ft Maximum Height: 4 ft							
Sandwich Board	Maximum Area: 8 sq ft Maximum Height: 4 ft							

Zoning Districts ¹								
	C	R-1/2	R-3	INS	B	PUD ²	M	A
Permanent Business Sign Group								
Sign	Maximum Width: 3ft							
Electronic Message Boards (in addition to maximum permitted signage area)								
Maximum Area (per side)	—	—	—	10 sq ft	25 sq ft	25 sq ft	10 sq ft	—

Footnotes for Figure 82-800b:

...

3. For single tenant buildings on lots less than or equal to one acre: 100 square feet. For single tenant buildings on lots greater than one acre: 150 square feet. For multitenant buildings on lots less than or equal to one acre: 150 square feet. For multitenant buildings on lots greater than one acre: 200 square feet.

...

This ordinance shall take effect the day after publication.

The numeric section numbers and headings of any portions of the Code of Ordinances affected by this Ordinance 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 _____, 2021.

ROLL CALL VOTE:

CITY OF BERLIN

____ AYES
____ NAYS
____ ABSENT

BY: _____
Richard D. Schramer, Mayor

APPROVED AS TO FORM:

ATTEST: _____
Jodie Olson, City Clerk

Matthew G. Chier, City Attorney

To: Plan Commission

From: Lindsey Kemnitz

Subject: Review and discuss accessory structure ordinance

Background:

After last month's meeting Attorney Chier made corrections on the draft ordinance per the discussion that occurred. Attorney Chier reminded me of the temporary/ permanent structure amendments that were discussed in 2019 and never approved. The reason for the temporary/permanent structures amendment was due to the several residents installing temporary carports. The draft ordinance includes the proposed changes from 2019 and from last month's meeting. I thought since we are discussing the accessory structure ordinance, we should include both changes if the commission agrees on the proposed amendments. Below are a few items that Attorney Chier and I were uncertain if the commission agreed on.

- Maximum square footage for permanent accessory structures. Currently allow a total of 1,400 sq ft for detached accessory structures. Should it be one set maximum for residential lots or sliding scale? An additional 100 sq ft per acre for lots greater than one acre. 1 to 2 acres 1,500 sq ft, 2 to 3 acres 1,600 sq ft and so on.
- Do we want to require architectural matching requirements?
- Can accessory structures exceed the living area sq ft of the primary structure?

Attached is a map showing all of the parcels over 1 acre in size. There is a total of 160 parcels over 1 acre that are zoned R-1, R-2, or R-3.

99 parcels 1-1.99 acres

2 parcels 10-19.99 acres

20 parcels 2-2.99 acres

4 parcels 20-29.99 acres

13 parcels 3-3.99 acres

1 parcels 30-39.99 acres, which is owned by ThedaCare

5 parcels 4-4.99 acres

5 parcels 5-5.99 acres

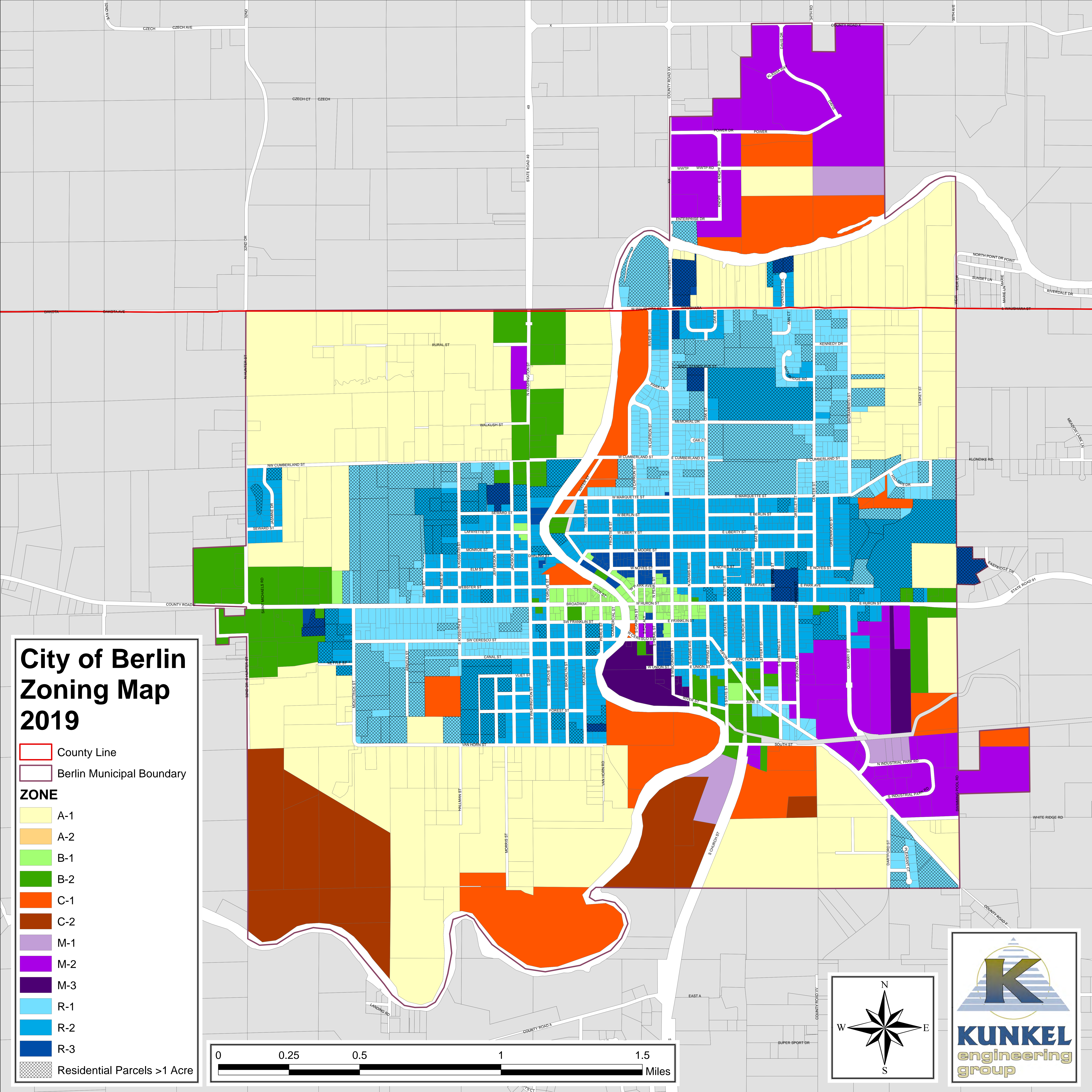
6 parcels 6-6.99 acres

3 parcels 7-7.99 acres

2 parcels 8-8.99 acres

1 parcel 9-9.99 acres

Recommendation: Schedule public hearing for amendments to the accessory structure ordinance for the March Plan Commission meeting.

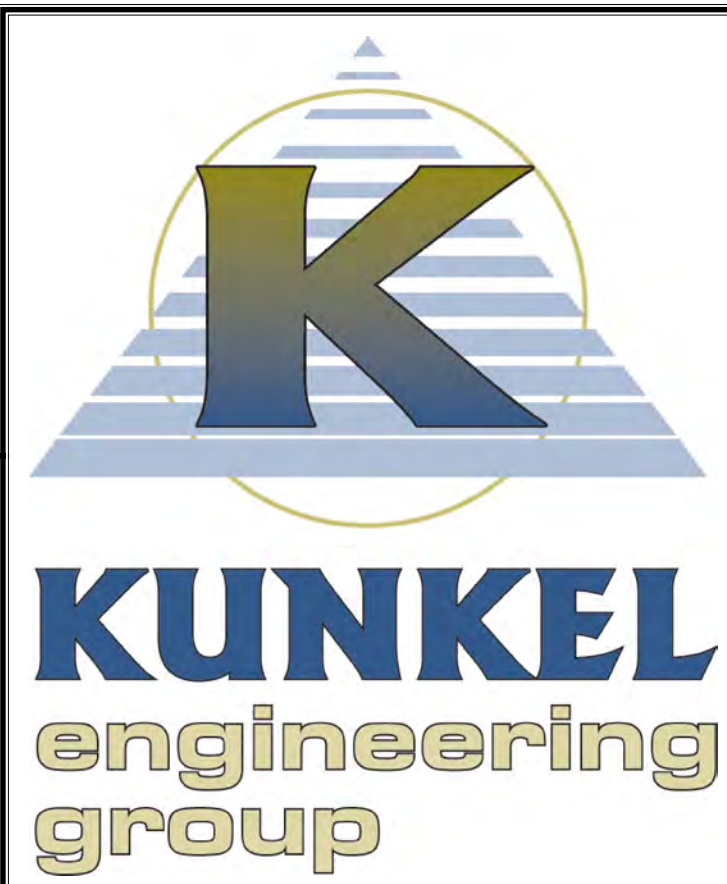
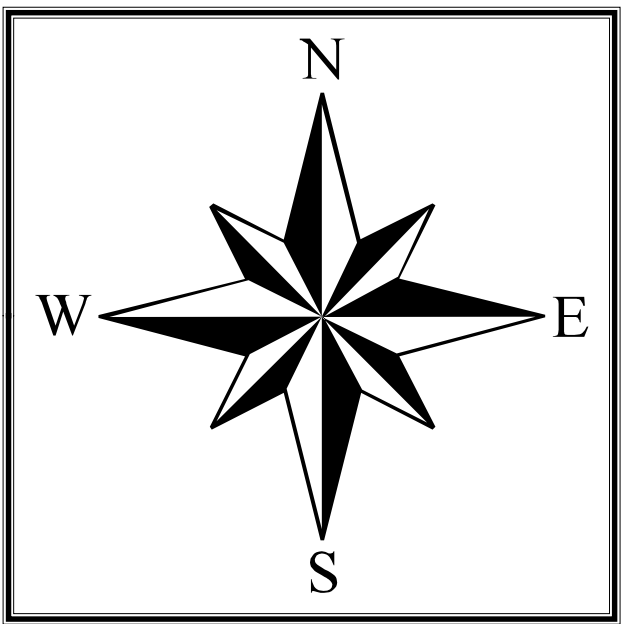
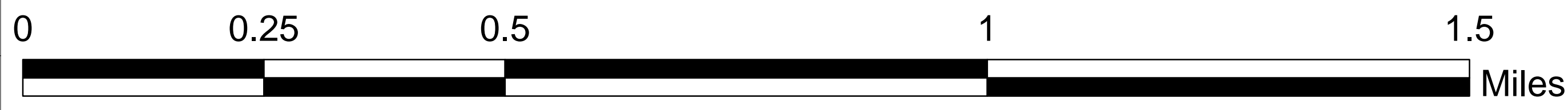


City of Berlin Zoning Map 2019

- County Line
- Berlin Municipal Boundary

ZONE

- A-1
- A-2
- B-1
- B-2
- C-1
- C-2
- M-1
- M-2
- M-3
- R-1
- R-2
- R-3
- Residential Parcels >1 Acre



AN ORDINANCE AMENDING THE ZONING CODE TO REDEFINE PERMANENT AND
TEMPORARY STRUCTURES AND TO CHANGE LIMITATIONS RELATING TO THE SIZE AND
NUMBER OF ACCESSORY STRUCTURES

WHEREAS, the City of Berlin Plan Commission has held a public hearing regarding the ordinance as set forth herein, on [insert applicable date]; and

Comment [MC1]: Will be inserted once known.

WHEREAS, the Plan Commission has recommended to the Common Council to approve the ordinance 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.

Comment [MC2]: These proposed changes to definitions stem from an ordinance that was discussed last year to try to clarify the difference between temporary and permanent structures which was causing confusion and enforceability problems for Lindsey. Specifically, this is intended to address the issue of the more pervasive use of "temporary" structures such as canopies and carports to get around permitting requirements and other limitations that would normally apply to permanent structures.

~~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.~~

...

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.~~

Comment [MC3]: This was able to be deleted because this limitations are covered elsewhere and this language was duplicative.

Sec. 82-289 of the Code of Ordinances shall be amended as follows:

Sec. 82-289. - Area regulations.

Area regulations in the R-1 district shall be as follows:

...

- (5) Percentage of lot covered. All ~~buildings~~structures, including the principal structure, ~~detached garages and accessory buildings~~structures (whether permanent or temporary), shall not cover more than 30 percent of the area of the lot, nor shall the total of all detached ~~garages and accessory building(s)~~structures (whether permanent or temporary) cover more than 30 percent of the rear yard. The combination of two previously platted or certified survey lots adjoining on the rear and both separately fronting on streets shall not be effective for purposes of increasing the total area of either lot for purposes of the 30 percent coverage requirements under this paragraph. Further, if two such lots are attempted to be combined into one lot via a new plat or certified survey map, the applicant for the plat or certified survey map shall be required, as a condition of approval, to record a notation on the plat or the certified survey map indicating that the combination of the two previous lots shall not be effective for purposes of increasing the total area of

either lot for purposes of the 30 percent coverage requirements under this paragraph.

Comment [MC4]: This is an important provision to be considered in the context of our discussions relating to limiting the number of permanent accessory structures on a lot. These limitations, which were already in place, are already fairly limiting. As you will see below, Lindsey and I are recommending that you eliminate the specific individual size limitations on permanent accessory structures, except for a cumulative floor area limitation and the percentage of lot covered limitations described in this paragraph.

It is also important to understand that the changes to this paragraph now clarify that all structures, whether permanent or temporary, are counted for purposes of making these percentage of lot covered determinations. So for example, if someone has a house and two large accessory structures on a lot that already use up 30% of the lot, that person would not then be able to put up a carport because the floor area of that carport would cause the lot to exceed the 30% limitation.

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, 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 [MC5]: This is the key provision that now requires all structures, whether permanent or temporary, to get a permit, with a few limited exceptions. This is the key to ensuring that people need to get a permit for things like carports and other temporary structures that were effectively sliding by in the past without any regulation or limitation.

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 and size limits. ~~Except as expressly stated otherwise hereafter in this paragraph, in addition to the principal building structure (which includes any attached garage), a detached garage, one additional accessory building, and four play structures and an unlimited number of additional accessory structures (whether permanent or temporary) may be placed on a lot, subject to all percentage of lot covered limitations and other area regulations for the applicable district. However, permanent accessory structures having an individual floor area of greater than 50 square feet shall be limited to a maximum~~

of two per lot, and the cumulative floor area of such permanent accessory structures shall not exceed _____ square feet, again subject to all percentage of lot covered limitations and other area regulations for the applicable residential district). However, also, 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.

Comment [MC6]: This is where the limitations on the number and cumulative floor area of the permanent accessory structures has been moved (from 82-553(3)b). It made more sense to include all that under this section, rather than in that other separate section.

The other important thing to note about this section is that it now states, subject to some important exceptions, that an unlimited number of accessory structures (whether permanent or temporary) are allowed on a lot, in addition to the principal structure and 4 play structures. Because we have greatly expanded the definition of structure to now encompass things like carports, tents and canopies, it was important to eliminate the limitation on total number of accessory structures because that would have been too complicated to enforce. Instead, there will now be simply the overall limitations on percentage of lot covered (i.e. the 30% rules), which is easy to explain to homeowners and simpler to enforce. Of course, there will still be the limitation on large (greater than 50 square feet) permanent accessory structures; specifically that there may only be 2 such structures and that their cumulative square footage will be limited to some maximum number. I didn't feel comfortable inserting an actual number for the maximum square feet, but based on Lindsey's research on typical sizes of such building ... [1]

Comment [MC7]: Also, please note that we've gone away completely from the differentiation between lots under 1 acre and those over 1 acre. The 30% lot coverage limitations should arguably be sufficient no matter what size lot we're dealing with, but if we do want to create a different cumulative maximum square foot requirement for lots under one acre versus those over one acre, we can certainly discuss that.

Lastly, please note that I removed all of the architectural matching requirements for the accessory structures. As discussed by the PC at it last meeting, that became difficult when the principal structure is something unusual such as an A-frame, or when a homeowner wants to phase into a different type of roofing, such as steel versus asphalt, but doesn't have the funding to do both at the same time or perhaps the principal structure's roof still has many years of wear left on it. Please let us know if there remain any concerns about the architectural matching. Please understand that there will continue to be construction regulations in place for all structures. Specifically, Sec. 82-288(c) reads as follows:

(c) Residential dwellings constructed on site or manufactured homes attached to a found ... [2]

(3) *Detached accessory buildings/structures.*

a. Except as provided in subsection 82-22(a) or elsewhere in this chapter, and for signs, outdoor lighting, and as hereafter provided for permanent accessory structures exceeding 50 square feet in floor area, detached garages and accessory structures shall not exceed 15 feet in height. However, such 15-foot height restriction may be exceeded for permanent accessory structures exceeding 50 square feet in floor area if both of the following conditions are met:

1. The roof pitch of the detached garage or accessory building structure architecturally matches the roof pitch of the principal structure; and
2. The height of the detached garage or accessory building structure 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.

eb. Except as provided in subsection 82-22(b) or elsewhere in this chapter, detached 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, detached 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, detached 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.

dc. 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.

ed. ~~Except for signs, outdoor lighting, fences, and as provided in subsection 82-22(b) or elsewhere in this chapter, D~~detached 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.

fe. 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, Aan 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, If 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 [M8]: 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, 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 take effect the day after publication.

The numeric section numbers and headings of any portions of the Code of Ordinances affected by this Ordinance 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 _____, 2021.

ROLL CALL VOTE:

CITY OF BERLIN

____ AYES
____ NAYS
____ ABSENT

BY: _____
Richard D. Schramer, Mayor

APPROVED AS TO FORM:

ATTEST: _____
Jodie Olson, City Clerk

Matthew G. Chier, City Attorney

This is where the limitations on the number and cumulative floor area of the permanent accessory structures has been moved (from 82-553(3)b). It made more sense to include all that under this section, rather than in that other separate section.

The other important thing to note about this section is that it now states, subject to some important exceptions, that an unlimited number of accessory structures (whether permanent or temporary) are allowed on a lot, in addition to the principal structure and 4 play structures. Because we have greatly expanded the definition of structure to now encompass things like carports, tents and canopies, it was important to eliminate the limitation on total number of accessory structures because that would have been too complicated to enforce. Instead, there will now be simply the overall limitations on percentage of lot covered (i.e. the 30% rules), which is easy to explain to homeowners and simpler to enforce. Of course, there will still be the limitation on large (greater than 50 square feet) permanent accessory structures; specifically that there may only be 2 such structures and that their cumulative square footage will be limited to some maximum number. I didn't feel comfortable inserting an actual number for the maximum square feet, but based on Lindsey's research on typical sizes of such buildings, it seems like 2,000 square feet for a cumulative total for 2 buildings might be an appropriate amount. This is definitely open for further discussion. Also, my choice of 50 square feet is open for discussion, but I needed some delineation amount to distinguish between small permanent structures such as a fountain or stone bench and the larger detached garages and pole buildings that we've been discussing.

Also, please note that we've gone away completely from the differentiation between lots under 1 acre and those over 1 acre. The 30% lot coverage limitations should arguably be sufficient no matter what size lot we're dealing with, but if we do want to create a different cumulative maximum square foot requirement for lots under one acre versus those over one acre, we can certainly discuss that.

Lastly, please note that I removed all of the architectural matching requirements for the accessory structures. As discussed by the PC at its last meeting, that became difficult when the principal structure is something unusual such as an A-frame, or when a homeowner wants to phase into a different type of roofing, such as steel versus asphalt, but doesn't have the funding to do both at the same time or perhaps the principal structure's roof still has many years of wear left on it. Please let us know if there remain any concerns about the architectural matching. Please understand that there will continue to be construction regulations in place for all structures. Specifically, Sec. 82-288(c) reads as follows:

(c)

Residential dwellings constructed on site or manufactured homes attached to a foundation shall meet the following minimum construction standards in addition to complying with all applicable codes:

(1)

Have a standing seam or ribbed pre-finished metal, wood-shake, asphalt or fiberglass shingle roof with a minimum slope of 2.5:12.

(2)

Have exterior wall coverings consisting of any of the following materials or combinations thereof:

a.

Aluminum, steel or vinyl siding;

b.

Wood or simulated wood; or

c.

Brick, stone or stucco.

(3)

Be attached to a frost free (meaning constructed below the frost line) permanent foundation meeting the requirements of the state uniform dwelling code and approved by the building inspector, which surrounds the entire perimeter of the structure and completely encloses the space between siding and the finished grade.

(4)

Manufactured homes must have any running gear and towing hitch removed and have an anchoring system that is totally concealed under the structure.

(5)

Is constructed and installed pursuant to a building permit and subject to all required inspections to insure that the foundation and all on-site work is constructed to minimum standards and that a manufactured home is assembled or placed on-site in accordance with the manufacturer's instructions, and to assure that it is in compliance with standards regulating the anchoring of the structure to its foundation and other building requirements.

(6)

Be properly connected to all applicable utilities.

To: Plan Commission

From: Lindsey Kemnitz

Subject: Review and discuss protective covenants for North Business Park

Background:

The Town of Aurora reviewed the proposed changes to the protective covenants and had a few concerns. Below are the concerns for discussion.

The pole Building

Under Architectural and Design Control #1

The way it stated a Pole building would not be allowed or be very costly to build to meet the equivalent of a masonry or steel structure in the terms of fire proof and snow load.

Pole build structures should be included into the verbiage of #1

The town also feels that the pole structure should be fully in closed I feel, we would both be disappointed if some one built a pole shed for storage and left one side open or had no sides at all. Maybe the board is over thing things and that is cover under something else.

JUNKYARDS

What is the definition of a Junkyard and the definition of a Salvage Yard

With a conditional use a Salvage Yard would be permitted that does concern the board as we talked about how it looks as you drive into Oshkosh on Hwy 21. That maybe a better fit for a M3 zoning

With the dismantling of the ETZA the Town Feels it should be noticed by mail or email of any public meeting involving a Variance, Conditional use permit, Special exception. With in the North Industrial Park and within 200 feet of the towns Border

Recommendation: Action as appropriate.

Document No.

**RESTATED DECLARATION
OF PROTECTIVE
COVENANTS FOR THE
BERLIN NORTH BUSINESS
PARK**

WHEREAS, the City of Berlin, a Wisconsin municipal corporation, has previously adopted restated protective covenants for its Berlin North Business Park pursuant to the following document:

RESOLUTION APPROVING RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR REMAINING UNDEVELOPED CITY OWNED PARCELS IN THE BERLIN BUSINESS PARK dated May 12, 2009 and recorded in the Office of the Waushara County Register of Deeds on September 29, 2009 at 11:06 a.m. in Volume 879 of Records on pages 489-496 as Document No. 463245; and

WHEREAS, such restated protective covenants shall hereinafter be referred to as the "North Business Park Protective Covenants"; and

WHEREAS, by this Restated Declaration, it is the intention of the City of Berlin Common Council and all owners of real property in the Berlin North Business Park to supersede and restate the North Business Park Protective Covenants, and

Return to:
Chier Law Office LLC
137 E. Huron Street
Berlin, WI 54923

Tax ID Nos. 206-03457-0120, 206-03424-0230, 206-03424-0220, ~~206-03423-0621~~, 206-03421-0111, 206-03424-0145, 206-03455-0110, 206-03455-0000

WHEREAS, by this Restated Declaration, it is the further intention of the City of Berlin Common Council to have the North Business Park Protective Covenants, as restated herein, cover all parcels in the North Business Park whether or not such parcels are currently developed; and

WHEREAS, accordingly, this Restated Declaration, and the restated protective covenants as described herein, shall affect all of the real property described on Exhibit A as attached hereto (hereinafter referred to as the "North Business Park Property"; and

WHEREAS, it is further expressly not the intention of this Declaration to affect in any way the Resolution Approving Protective Covenant Concerning the City Farm dated March 9, 1993 and recorded in the Office of the Waushara County Register of Deeds on August 2, 1993 at 9:00 a.m. in Volume 436 of Records on pages 449-454 as Document No. 317716 (hereinafter "City Farm Resolution"), whereby said City Farm Resolution shall remain in full force and effect as to all parcels to which it applies, regardless of this Declaration, and in any circumstance where the City Farm Resolution conflicts with the terms of this Declaration, the terms of the City Farm Resolution shall control; and

WHEREAS, the North Business Park Property is intended for continued industrial and business use.

NOW THEREFORE, in consideration of the aforesaid and for the continuing purpose of preserving the value of the parcels contained within the North Business Park Property as well as all lands located in the general vicinity, the City of Berlin Common Council and all owners of real property in the Berlin North Business Park hereby declare and provide that the North Business Park Property shall be subject to the restrictions, covenants, and conditions as set forth in the Restated Protective Covenants For The

Comment [MC1]: Lindsey suggests we include the whole park as it will be better for uniform and consistent enforcement. Once we get approval of the text, Lindsey and I will work together to identify a complete list of tax parcels in the park, and then work with a title company to develop a complete legal description. This will also mean we will need to get approval and signatures from all other owners of land in the park so that it doesn't just apply to some of the parcels.

Comment [MC2]: Once we get the title report of the entirety of the park, I will attach an Exhibit A accordingly.

1 Berlin North Business Park attached hereto as Exhibit "B". All provisions of the North Business Park Protective Covenants currently affecting the North Business Park Property shall be superseded and replaced by the provisions of the Restated Protective Covenants For The Berlin North Business Park attached hereto as Exhibit "B".

CITY OF BERLIN

EXECUTED THIS ____ DAY OF _____, 2020.

BY _____
Richard D. Schramer, Mayor

ATTEST: _____
Jodie K. Olson
City Clerk

AUTHENTICATION

Signature(s) Richard D. Schramer and Jodie K. Olson
authenticated this ____ day of _____, 2020

Matthew G. Chier, Wisconsin State Bar No. 1026856
TITLE: MEMBER STATE BAR OF WISCONSIN

OTHER PROPERTY OWNERS:

[INSERT SIGNATURE LINES FOR ALL PROPERTY OWNERS, WITH SEPARATE DATE FOR EACH SIGNATURE, AND INCLUDING A SEPARATE NOTARY JURAT FOR EACH]

THIS INSTRUMENT WAS DRAFTED BY:
ATTORNEY MATTHEW G. CHIER
137 E. HURON STREET, BERLIN, WI 54923

EXHIBIT "A"
RESTATED DECLARATION OF PROTECTIVE
COVENANTS FOR THE BERLIN NORTH BUSINESS PARK

LEGAL DESCRIPTION OF NORTH BUSINESS PARK PROPERTY

All that in the NW¼, the NE¼, the SE¼ and the SW¼ of Section 34, Town 18 North, Range 13 East, in the City of Berlin, Waushara County, Wisconsin, described as follows:

Government Lot 7 in the W½ of the SW¼ of Section 34, North of the Fox River,, excluding CSM's #1134, #2352, #3396 and #3868. Parcel Identification Number 206-03457-0120

That part of the S½ of the SE¼ of the NW¼ of Section 34, Excluding CSM #4316. Parcel Identification Number 206-03424-0230

That part of the S½ of the SE¼ of the NW¼ of Section 34, also known as Lot 2 of CSM #4316. Parcel Identification Number 206-03424-0220

~~That part of the SW¼ of the NW¼ of Section 34, North of Power Drive, South of CSM #2721 and West of CSM #3447, Excluding Volume 699, Page 744. Parcel Identification Number 206-03423-0621~~

That part of the NE¼ of the NW¼ of Section 34, also known as Lot 1 of CSM #5355. Parcel Identification Number 206-03421-0111

That part of the NE¼ of the NW¼ of Section 34, also known as Lot 2 of CSM #5355, Excluding Document Number 456022, Volume 850, Page 326. Parcel Identification Number 206-03424-0145

That part of the W½ of the NE¼ and the NE¼ of the NW¼ of Section 34, also known as Lot 3 of CSM #5355. Parcel Identification Number 206-03413-0110

That part of Government Lot 5, in the NW¼ of the SE¼ of Section 34, North of the Fox River. Parcel Identification Number 206-03455-0000.

Comment [MC3]: We will revise this legal description to include the entire park description to be provided from a title report from a title company.

Exhibit "B"

**RESTATED DECLARATION OF PROTECTIVE
COVENANTS FOR THE BERLIN NORTH BUSINESS PARK**

Comment [MC4]: Note that the tracked changes shown in this Exhibit B are intended to show changes from the previous set of covenants put in place on vacant city owned land in the business park in 2009.

RESTATED PROTECTIVE COVENANTS FOR THE BERLIN NORTH BUSINESS PARK

I. GENERAL PURPOSE AND CONDITIONS

The Remaining-North Business Park Property shall be subject to the conditions, covenants, restrictions, easements, and protections hereby declared to ensure proper use and appropriate development and improvement of each building site thereof; to protect the industrial and business environment in the Remaining-North Business Park Property ~~and the City of Berlin North Business Park as a whole~~; to guard against the erection thereon of structures built of improper or unsuitable materials; to ensure reasonable development of said property and locations thereon of buildings; to control development of said property as a business park including but not limited to proper setbacks from the street, adequate free space between structures, adequate parking, and in general, to provide for a high quality of improvements on said property, to ensure that each building site will not adversely affect the general plan for physical development of the business park, nor adversely affect the health or safety of residents or properties in the Remaining-North Business Park Property, ~~the North Business Park as a whole~~, and surrounding areas. The City of Berlin shall hereinafter be referred to in this Exhibit "B" as the "City".

II. LAND USE

A) PERMITTED USES

- 1) Manufacturing, warehousing, and distribution activities in general compliance with the City ~~of Berlin~~ Zoning Code.

B) PROHIBITED USES

- 1) Stockyards
- 2) Commercial/retail trade
- 3) Service
- 4) Fresh animal kill operations
- 5) Slaughter house
- 6) Pre-finished tannery operations
- 7) Pulp mills
- 8) Rendering plant
- 9) Junkyard
- 10) Sauerkraut manufacturing facility
- 11) Similar or like-type uses or operations which are offensive due to odor, noise, or unsightly appearance

Comment [MC5]: Lindsey has pointed out that when we recently amended the CUP ordinance, we included daycares, filling stations, hospitals, and health clinics in the M-2 Zoning District. There should accordingly be discussion about possibly adding exceptions to this provision to allow those conditional uses, so long as issued pursuant to a valid conditional use permit by the City of Berlin. Alternatively, we could create a separate and concurrent conditional use type process for these restrictive covenants. So if someone got a conditional use permit from the city, they would have to get a separate conditional use type permit from the PC under these restrictive covenants. That seems like overkill, but it is an option to consider.

Also, another important thing to note is that any alteration that we want to make, or exception we want to add, to this section II.B) will require Town of Aurora Board approval.

Said prohibitive uses may only be amended by a joint resolution adopted by the City ~~of Berlin~~ and the Town of Aurora and in no other manner.

III. ARCHITECTURAL AND DESIGN CONTROL

A) BUILDING MATERIALS

- 1) Any building constructed on a parcel in the Remaining-North Business Park Property shall be of a masonry construction, enameled steel, steel frame, or the equivalent thereof or better.

~~2) Pole building construction is prohibited.~~

~~2) 2)~~ No building shall be so similar to or so at a variance with its neighboring building as to constitute a depreciation to the immediate neighborhood. The color and design of buildings should be consistent with adjacent structures.

~~4) 3)~~ Fronts of buildings and particularly the office areas shall be improved with decorative masonry, glass, accented metal panels or the equivalent thereof or better.

~~5) 4)~~ All buildings including accessory buildings, shall not cover more than 50% of the lot.

B) LANDSCAPING

1) All open areas of any parcel not used for parking, driveways, or storage, shall be landscaped, graded, and sodded or seeded within twelve months (12) of occupancy.

2) Trees (deciduous, coniferous, or ornamental bushes) and plantings shall be placed at a minimum in the front of the building site.

3) All land shall be maintained and kept free of noxious weeds, rubbish and debris by the property owner. It shall be the responsibility of the property owner to keep the grass mowed in the City right-of-way abutting the owner's property up to the street pavement and to the property boundaries on the sides and rear.

If property is not maintained, the City ~~of Berlin~~ may serve notice to maintain and if not complied with in five (5) days, the City shall mow the area or otherwise do maintenance and add this cost to the lot owner's real estate taxes.

C) ON-SITE UTILITIES

1) Electrical, gas, and other service extensions shall be installed underground from the street right-of-way, or power company easement to the building.

IV. SETBACK AND LOT AREA REQUIREMENTS

A) No part or portion of any building shall be erected, constructed, or extend nearer than ~~forty~~ thirty (30) feet of the right-of-way of any public street or highway.

B) Not less than twenty (20%) percent of the front setback area shall be maintained as decorative areas, grass, and plantings.

~~C)~~ No part or portion of any building shall be erected, constructed, or extended nearer than twenty (20') feet to any rear lot line or side lot line.

~~C) D)~~ The division of any lot, area, or tract of land within the North Business Park for any purposes, whether immediate or future for conveyance, transfer, improvement or sale shall not result in the creation of any parcel of land less than one acre in size.

V. OFF-STREET PARKING AND LOADING REGULATIONS

A) Sufficient off-street parking shall be provided for employees, customers, and visitors.

- 1) Total parking area shall be a minimum of one hundred eighty (180) square feet per vehicle.
- 2) A minimum parking ratio of two (2) spaces for each three (3) employees shall be required on the maximum employment labor shift of the grantee.
- 3) All parking areas and drives shall be improved with asphalt, concrete, or the equivalent within eighteen (18) months from the time of the occupancy of the building.

~~Any property owner may obtain a waiver from this requirement by written approval from all other City of Berlin North Business Park land owners, and upon review and approval by the City of Berlin Plan Commission. Once granted, the waiver may be rescinded at any time by the City of Berlin Plan Commission, but only upon written request by any land owner in the City of Berlin North Business Park.~~

- 4) Outside storage areas do not need to be paved but are to be maintained in a dust free or low dust manner so as to not create a nuisance for neighboring properties.
- 5) No parking shall be permitted nearer than fifteen (15') feet from any street right-of-way.

- B. Sufficient loading and maneuvering areas shall be entirely contained on site and behind the property line. No vehicle shall be allowed to protrude beyond the property line while loading or unloading.

VII. ~~SIGN~~TAX EXEMPT USE

~~A) Billboards are not permitted~~

~~B) A sign identifying the name, business, or products of the person or firm occupying the premises is required.~~

- ~~1) The sign shall be no larger than seventy-two (72) square feet with a perimeter of less than fifty-four (54') feet. Sign shall not exceed ten (10') feet in height.~~

~~A) No land may be sold, leased, subleased, assigned, or in any manner conveyed to any third party if such sale, lease, sublease, assignment or conveyance to that third party is known or reasonably expected to result in all or any portion of the land use or underlying land to become tax exempt or exempt from local taxation, nor may an owner of land convert himself, herself or itself to a tax exempt owner or convert the use of the land if such action would result in all or any portion of the land use or underlying land to become tax exempt or exempt from local taxation, unless the City is notified in advance of the sale, lease, sublease, assignment, conveyance, or other action, and the owner or third party, as applicable, agrees to enter into a payment in lieu of taxes agreement (hereinafter "PILOT Agreement") with the City, whereby such contracting party shall agree with the City to make an annual payment in lieu of property taxes to the City equivalent to the gross taxes that would be imposed by the City if the land use or the land was not tax exempt or exempt from local taxation. In connection therewith, the City covenants and agrees to enter into the PILOT Agreement with the applicable owner or third party, and to fairly and accurately assess the value of the applicable land interest. If any owner converts himself, herself or itself, or any land is sold, leased, subleased, assigned, conveyed, or converted, in violation of this provision, then the owner of the land prior to such action shall be responsible to make payment to the City in the amount that would be required had a PILOT Agreement been executed with the City as required herein, commencing from the date of such action (with~~

Comment [MC6]: This section was added to avoid or mitigate the sale or conversion of lots to non-profit, non-tax paying entities.

the first year pro-rated to the day of such action) through and including the date a PILOT Agreement is executed by and between the City and the third party, if ever. Any payment made by an owner hereunder shall be on reasonable terms and conditions determined by the City. If an owner fails to issue any payment to the City as required hereunder, the City shall have the right to institute any other actions or proceedings as it may have available at law or equity, including but not limited to injunctive relief, that it deems desirable for effectuating the purposes of this provision.

VIII. SCREENING REQUIRED

- A) All material or products stored outside the building shall be screened by a wall, fence, or evergreen planting to limit exposure by a minimum of 55%, built to or maintained at a height equivalent or greater than the stored material.
 - 1) Such screening shall comply with the front yard setback requirement or be in line with the front of the building whichever is greater.
 - 2) Side yard and rear yard storage is permitted with proper screening within the setbacks provided for buildings on the premises.
- B) Screening shall also be required in addition to or in lieu of that required under sub paragraph A) along all property boundaries, where the adjacent property is zoned differently than the subject property, as necessary to preserve the integrity and zoning classification of the adjacent property. The boundary screens may consist of existing or planted vegetation, fences, walls, earth berms, or similar techniques. Plant screens shall be sufficient to provide a year-round screen within five (5) years of installation.

IX. APPROVAL OF PLANS

- A) No building shall be erected on any building site in the park until the plans for such building or improvement, including site plan, building plan, and specifications have been approved by the Plan Commission of the City of Berlin. This information can be presented at the time land is purchased in its preliminary format. The City Plan Commission shall approve or disapprove such plans with respect to conformity with these restrictions and other applicable enactments of the City, and with respect to harmony of external design and the land use as it affects property within and adjacent to the park. Additions and alterations shall be in conformance with applicable building codes, and if said addition plans exceed 50% of the existing floor area, the Plan Commission shall be made aware of the alteration. Failure of the City Plan Commission to act upon such building or improvement plans within forty-five (45) days after submission to the City Plan Commission, shall constitute approval of such plans under these covenants.

X. ~~COMMENCEMENT AND COMPLETION OF CONSTRUCTION AND REPURCHASE OPTIONS~~CITY'S FIRST RIGHT OF PURCHASE VACANT LAND; RESTRICTIONS AND COVENANTS RUN WITH THE LAND.

~~Construction of improvements on any parcel purchased out of the Remaining Park Property shall commence no later than one hundred eighty (180) days after purchase of the parcel and shall be completed within one (1) year after purchase. In the event this requirement is not met, the City of Berlin shall have the option to nullify the original sale transaction and demand title be conveyed back to the City of Berlin. The City of Berlin shall return all consideration paid, less all actual costs incurred by the City related to the sale transaction, including actual attorneys fees incurred. The restriction described in this paragraph may be waived or modified by the City of Berlin Plan Commission when an existing owner of a parcel in the City of Berlin~~

Comment [MC7]: Lindsey pointed out that per 14-12 (C), site plan reviews are required for construction, reconstruction, expansion or conversion. We do not have a rule about exceeding 50% of the existing floor area. Also, the end of the sentence references addition and alteration interchangeably. From a building permit perspective, we consider addition as new sq ft being built, and alteration is just remodel. She therefore suggested to remove this and just use the existing building code site plan ordinance so the enforcement is consistent.

Comment [MC8]: This section was completely redrafted to make the right of first purchase clearer and easier to enforce.

~~North Business Park, with a building located thereon, purchases adjoining land for purposes of expansion. Further, this provision shall be waived if the contract for the purchase of the parcel from the City sets forth different time limits for commencement or completion of improvements.~~

A) In the event any owner of a parcel elects to sell any vacant parcel in the ~~Remaining North Business Park~~ Property, it shall first be offered for sale, in writing, to the City ~~of Berlin~~ at the parcel's fair market value, to be determined by a Wisconsin licensed commercial real estate appraiser selected and hired by the City ~~of Berlin~~. The City ~~of Berlin~~ shall have sixty (60) days from the date of receipt of the offer to sell to complete the appraisal and to accept or reject the offer, unless an extension of time may be mutually agreed upon and set forth in writing. Acceptance or rejection of such offer shall be indicated by resolution adopted by the ~~City's Common Council of the City of Berlin~~. If the offer to sell is accepted by the City ~~of Berlin~~, the terms and conditions of the sale shall be as follows:

- a) The closing date shall be no later than 30 days after delivery of the City's acceptance.
- b) The purchase price shall be payable in cash (or cash equivalent) at closing.
- c) Occupancy of the entire subject property shall be given to the City at the time of closing.
- d) The subject property shall not be subject to a lease which extends beyond closing, unless expressly agreed to in writing by the City.
- e) The transaction shall be closed at the office of the City Attorney, unless another location is mutually agreed upon by the parties.
- f) Real estate taxes for the subject property shall be prorated at closing. Net general real estate taxes shall be prorated based on the net general real estate taxes for the current year, if known, otherwise on the net general real estate taxes for the preceding year.
- g) The City will accept the condition of the subject property AS IS.
- h) The selling party shall maintain the subject property until the closing in materially the same condition as of the date of the City's acceptance of the offer hereunder, except for ordinary wear and tear. If, prior to closing, the subject property is damaged in an amount of not more than five percent (5%) of the selling price, the selling party shall be obligated to repair the subject property and restore it to the same condition that it was on the day of the City's acceptance of the offer hereunder. If the damage shall exceed such sum, the selling party shall promptly notify the City of the damage and the City's obligation to purchase may be canceled at option of the City. Should the City elect to carry out the transaction despite such damage, the City shall be entitled to any insurance proceeds from the selling party's policies relating to the damage to the subject property, plus a credit towards the purchase price equal to the amount of the selling party's deductible on such policy.
- i) Upon payment of the purchase price, the selling party shall convey the subject property by warranty deed free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants and general taxes levied in the year of closing.

- j) The selling party shall give evidence of title in the form of an owner's policy of title insurance in the amount of the purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. The selling party shall pay all costs of providing title evidence. For purposes of closing, title evidence shall be acceptable if the commitment for the required title insurance is delivered to the City Attorney or the City not less than three (3) business days before closing, showing title to the subject property as of a date no more than fifteen (15) calendar days before delivery of such title evidence to be merchantable, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions as appropriate. If title is not acceptable for closing, the City shall notify the selling party in writing of objections to title by the time set for closing. In such event, the selling party shall have a reasonable time, but not exceeding fifteen (15) calendar days, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event that the selling party is unable to remove said objections, the City shall have five (5) calendar days from receipt of notice thereof, to deliver, written notice waiving the objections, and the time for closing shall be extended accordingly. If the City does not waive the objections, the transaction, and the City's option hereunder, shall be null and void. Providing title evidence acceptable for closing does not extinguish the selling party's obligations to give merchantable title to the City.
- k) Special assessments, if any, for work actually commenced or levied prior to the exercise of the City's option to purchase hereunder, shall be paid by the selling party no later than closing. All other special assessments shall be the responsibility of the City.
- l) There shall be no financing contingency or other contingencies (other than as expressly provided in this covenant) for the City's purchase of the subject property pursuant to this covenant.
- m) The parties shall confidentially provide the applicable closing agent their federal EIN or applicable social security numbers for purposes of preparation of the Wisconsin Real Estate Transfer Tax Return.

~~purchase price shall be payable in cash (or cash equivalent) at closing. The purchase shall include all of the seller's interest in the subject property, and shall exclude any personal property of the seller. The transaction shall be subject to standard real estate tax and other closing prorations. The subject property shall be sold "AS IS". Upon the payment of the purchase price, the seller shall convey the subject property to the City of Berlin by warranty deed free and clear of all liens and encumbrances, except municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and other municipal services, recorded building and use restrictions and covenants, and general taxes levied in the year of closing, provided none of the foregoing prohibit the continuing use of the subject property, which constitutes merchantable title for purposes of the transaction. The seller shall further be required to execute the documents necessary to record the conveyance. The seller shall provide prior to closing a commitment for title insurance to the City of Berlin in the amount of the purchase price on a current ALTA form issued by an insurer licensed to issue title insurance in Wisconsin. The title represented shall be merchantable, subject only to standard title insurance exceptions. The seller shall pay all costs of said title insurance and shall pay the transfer fee for the transaction. All special assessments and charges incurred prior to closing shall be obligation of the seller. The closing shall take place at the office of the City of Berlin's attorney no later than 30 days after the adoption of the City of Berlin resolution accepting the offer to sell. If the City of Berlin fails to act on~~

such offer of sale within the requisite sixty (60) day period or rejects said offer, the owner may then sell the offered parcel to any third party and the City of Berlin's rights under this paragraph shall be null and void. All other protective covenants, and those remaining covenants as contained herein, shall remain in full force and effect upon said lands, and the use of said lands by any subsequent purchaser shall continue to be subject to applicable zoning, ordinances, restrictions, and regulations relating to the use of said premises at the time of such sale. ~~Hereafter all existing land owners purchasing additional land in the Remaining Park Property shall be bound by these restated covenants for the newly acquired property as well as for the land owner's adjacent property if the newly acquired property in the Remaining Park Property is used for an expansion of the land owner's existing business on the adjacent property.~~

~~A)B)~~ All restrictions and covenants herein shall run with the land and shall be binding upon each owner of property in the North Business Park and their respective successors and assigns. Each parcel shall be conveyed subject to the within restrictions and covenants all of which are to run with the land and shall be binding on all parties and all persons claiming under them.

XI. ENFORCEMENT

- A) The requirements and restrictions set forth herein shall be enforceable by the City of Berlin Common Council, or its designees, upon recommendation from the City of Berlin Plan Commission, for the maximum period allowed by law and shall be enforceable by:
- 1) Injunctive relief, prohibitive or mandatory, to prevent breach of or to enforce performance or observance of these standards and requirements; or
 - 2) Money judgment for damages by reason of the breach of these standards; or
 - 3) Both (1) and (2) above.
 - 4) Failure of the City of Berlin to enforce any provisions contained herein upon the violation thereof, shall in no event be deemed to be a waiver of the rights to do so to any subsequent violation.
 - 5) The City of Berlin Common Council, upon review and recommendation by the City of Berlin Plan Commission, may grant variances to the provisions of these standards and requirements in cases where, by reason of extraordinary and exceptional conditions of any site or circumstances, would result in peculiar and practical difficulties or exceptional or undue hardship upon the owner of any building site, or where otherwise deemed appropriate by the City of Berlin Common Council.
 - 6) Invalidation of any of the provisions of these standards and requirements, whether by court order or otherwise, shall in no way affect any of the other provisions which shall remain in full force and effect.