

Code Committee MEETING AGENDA



December 6, 2023 - 3:00 PM
Badger Conference Room
3805 S. Casper Dr.

Published: 11/27/2023

AGENDA

1. **ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE**
2. **APPROVAL OF MINUTES**
 - A. July 6, 2021 Meeting Minutes
 - B. January 27, 2023 Meeting Minutes
3. **NEW BUSINESS**
 - A. GK DCD1-2302102 Zoning Code Updates
4. **ADJOURN**

Supplemental Information:

- *The meeting agenda and agenda packet are available online at www.NewBerlin.org. The minutes are published online and are approved at the next regularly scheduled meeting.*
- *It is possible that action will be taken on any of the items on the agenda and that the agenda may be discussed in any order.*
- *You may provide comments to the City Clerk via email at CitizenComments@NewBerlin.org. Comments will be forwarded to the Mayor and members of the governing body. Emailed comments are not read during the meeting.*
- *The City of New Berlin strives to host inclusive, accessible meetings that enable all individuals to engage and participate fully. Any person who has a qualifying disability under the Americans with Disabilities Act that requires that the meeting be accessible, please contact City Clerk Rubina R. Medina at (262) 786-8610 or via email at CityClerk@NewBerlinWI.gov at least 48 hours before the scheduled meeting time. Efforts will be made to accommodate the needs of disabled individuals through appropriate aids and/or services.*
- *It is also possible that members of and possibly a quorum of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to in the above notice.*

Due to the COVID-19 Pandemic, this meeting was not open to the public in an in-person capacity. To participate in the meeting, view the meeting, and/or ask questions, the public was able to do so by downloading the ZOOM app located at <https://zoom.us/> and utilize Meeting ID #: 859 2455 8919 to join.

All votes were taken via a voice roll call vote.

Please note: Minutes are unofficial until approved by the Code Committee at the next regularly scheduled meeting.

CITY OF NEW BERLIN PROCEEDINGS OF THE CODE COMMITTEE Tuesday, July 6, 2021

CALL TO ORDER

The Code Committee was called to order by Mayor Ament at 11:08 AM.

ROLL CALL; DECLARATION OF QUORUM

Committee Members Present: Mayor Dave Ament and Alderman Joe Stribl

Committee Members Excused: Brian McGrath

Staff Present: Director of Community Development Greg Kessler, Deputy Director of Community Development Nikki Jones, Principal Planner Kristen Hogan, Principal Planner Kelly Wall, and Deputy Clerk/Licensing Specialist Rubina Medina

APPROVAL OF MINUTES

- July 1, 2020 Meeting Minutes

Motion by Mayor Ament to approve the July 1, 2020 meeting minutes. Seconded by Alderman Stribl.

Motion Passed 2-0.

NEW BUSINESS

- KH DCD1-2002621 2021 Zoning Code Updates - Discussion and possible action regarding updates to the Zoning Code

The following discussion and edits were made to amendments to Chapter 275:

Section 275-13.1H. Zoning Districts

- Add: "(5) All areas currently located within the P-1 District are conforming under the current adoption of the code as of (date)" below Figure I-1.

Section 275-21F. Development Review Procedure

- (F)(3) Add verbiage at the end of the paragraph, "As long as the project does not change from the original conditions of approval from the Plan Commission approved plans, the Department of Community Development Director may grant a twelve-month extension if requested prior to the expiration of the 12 months, provided that the applicant demonstrates a valid cause acceptable to the Department of Community Development."

*These proposed changes in Section 275-212F were rejected. See discussion below.

Mayor Ament asked for clarification as to what this specifically applies to.

Kristen Hogan stated that this would apply for projects previously approved by the Plan Commission. When the applicant receives approval from Plan Commission, the approval is good for 12 months. If the applicant needed an extension beyond the 12 months, the Director of Community Development would be able to grant an extension rather than the applicant having to get another approval from the Plan Commission. Greg Kessler stated that this happens approximately one time per year.

Mayor Ament stated that although the Community Development Director is quite capable of making these decisions, he is hesitant to give this authority solely the director without it going to the Plan Commission. He would rather the application go before the Plan Commission and Council if an extension is needed. Ald. Stribl agreed and further stated that this brings awareness to the Plan Commission and he doesn't want to take away these authorities from the Plan Commission and Council. Greg Kessler stated that he is comfortable rejecting the proposed changes and keeping it as is. Additionally, this would also apply for the proposed changes on page 5 so those proposed changes would be rejected as well. Both Mayor Ament and Ald. Stribl agreed.

Section 275-23J. Planned unit development (PUD).

- J(1): Add "(a) If additional lands are acquired adjacent to an existing PUD and the owner intends to use the lands in support of and/or in a manner similar to the PUD, the owner shall be required to apply for an amendment to the PUD to include such lands. Any standards, criteria and development regulations shall be evaluated by the City prior to amending the PUD."
- J(2) Add at the end of the sentence ", pursuant to S 275-22."
- J(3) Add after the word approval ", not already identified in an approved". Remove the words "in a" before the word "PUD" and the word "District" after the word "Overlay". Insert the word "ordinance," after the word "Overlay" and the words "a PUD amendment, pursuant to S 275-22." after the word "require".
- Remove the words "Plan Commission review and approval" at the end of the sentence.

Section 275-24D. Zoning permits (use, site plan and architectural review).

- In (D)(2) remove the words "Plan Commission or Community Development Authority" from the second sentence and replace with "Department of Community Development Director". At the end of the same sentence, remove the words "Plan Commission or Community Development Authority" and replace with "Department of Community Development".
- *These proposed changes in Section 275-24D were rejected in conjunction with the rejected changes in Section 275-212F.

Section 275-32. Agricultural Districts. Table 275-32-1

- Add "Commercial Sports Complex" as a prohibited use in all districts.
- Remove "Active parks and recreation facilities"
- Remove "Passive parks and recreational facilities"

Section 275-33. Residential Districts. Table 275-33-1

- Add "Commercial Sports Complex" as a prohibited use in all districts.
- Remove "Active parks and recreational facilities" under "institutional/Public/Semipublic Uses"
- Remove the row titled "Passive parks and Recreational facilities"
- Insert "Amenities planned on outlots and/or easements as part of a subdivision plat, including pocket parks and/or trails" under "Miscellaneous Uses" as an accessory use in all single family districts.

Section 275-34. Commercial Districts. Table 275-34-1

- Insert "Commercial Sports Complex" as a principal use in the B-1 district and a prohibited use in all other districts. Refer to Section 275-36D(5).
- Insert "Public Signs" as a principal use in all districts. Refer to Section 275-61A(3).
- Remove "Active parks and recreational facilities"
- Remove "Passive parks and recreational facilities"

Section 275-35. Office and Industrial Districts. Table 275-35-1

- Insert "Commercial Sports Complex" as a prohibited use in the office districts and a principal use in the industrial districts. Refer to Section 275-36D(5).

- Insert “*Public Signs*” as a principal use in all districts. Refer to Section 275-61A(3).
- Change “*Research and development facilities*”, to a principal use in the M-1 and M-2 districts.
- Remove “*Active parks and recreational facilities*”
- Remove “*Passive parks and recreational facilities*”

Section 275-36. Institutional and recreational/park Districts. Table 275-36-1

- Add “*Commercial Sports Complex*” as a prohibited use in the I-1 district and a principal use in the park districts. Refer to Section 275-35D(5).
- Remove “*Active parks and recreational facilities*”
- Change “*Indoor recreational uses*” to an accessory use in the I-1 district.
- Remove “*Passive parks and recreational facilities*”
- Change “*Tournaments/sporting events*” to an accessory use in all districts.

Section 275-36D. Institutional and recreational/park Districts.

**To discuss with City Attorney at Plan Commission for how we want to handle State and County.*

- Add: “(5) *Commercial Park/Sports Complex* (a) *Commercial Park/Sports Complex is a regional park facility with intensive programming and use which is owned and operated by a private entity and which includes outdoor athletic fields for organized team activities. Such facilities are membership/ fee based and may include concessions/snack bar, a clubhouse, pro shop and/or other retail sales. It may also include an indoor sports facility. (b) Commercial Park/ Sport Complexes are prohibited in agricultural districts, as well as all residential districts or within 200’ of the border of a residential district due to the intensity of the use of such parks and the impact which they are likely to have with regard to, noise, light pollution, traffic and parking in surrounding neighborhoods and streets. (c) Commercial Park/Sport Complexes are permitted in B-1, industrial districts or on lands zoned P-1 and designated for such purposes in the park plan portion of the City’s Comprehensive Plan. In considering the rezoning of lands to permit the siting of such a facility it should be noted that Commercial Parks/Sports Complexes are generally not consistent with the rural character of the City west of Calhoun Rd.”*

Section 275-37. Special Districts. Table 275-37-1

- Add “*Commercial Sports Complex*” as a prohibited use in all districts.
- Remove “*Active parks and recreational facilities*”
- Remove “*Passive parks and recreational facilities – reclaimed quarry*”

Section 275-39C. Special overlay districts.

- Remove all verbiage in C. and replace with the word “*Reserved*”
- Remove Table 275-39-1

Section 275-42A. Accessory uses and structures.

- A(1) - Remove the verbiage “*s that have an agricultural assessment classification that may be tilled for the production of crops and/or lands devoted to grazing or feeding of livestock*” and add the verbiage “*that is primarily used for agricultural activity, including but not limited to the growing of qualified crops, planting in rows, fertilizing and tilling the land, and any other efforts to enhance growth of the yield. Physical evidence of agricultural activity can include furrows, crops, fencing and livestock. Minimal maintenance of the land and naturally growing crops will not be considered agricultural activity.*”
- Under A(6) remove the sentence “*Construction of an accessory use on a property without a principal structure is subject to Plan Commission review.*”

Section 275-42F(3). Accessory uses and structures.

- Add “[6] *Temporary outdoor storage units are prohibited as a permanent use.*”
Ald. Stribl stated that a lot of these shipping containers are being converted into small homes and he suggests that [6] be changed to: “Temporary outdoor storage units and small homes are prohibited as a permanent use.” Mayor Ament and staff agreed.

Section 275-46D(1). Yard/setback measurement and requirements.

- Add “(c) *Building Connections. For non-residential uses, building interconnections between buildings and adjacent parcels for shared or common operations, shall not be considered for setback purposes.*”

Section 275-57A(7)(f). Off-street parking, loading and access.

- (2) Include the words “To the maximum extent possible” to the beginning of the sentence and replace the letter N in the word “no” with a lowercase n. (**Rejected change**)
Add the verbiage to the end of the sentence. “, in addition to areas within the rural commercial boundary. The following may prevent parking in the rear: POWTS, wetlands, environmental corridor. In such cases, enhanced landscaping and/or buffer yards shall be required as approved by the City. Add the footnote “[1]” at the end of the sentence. Also add: “[1] Editor’s Note: The Rural Commercial Design Guide was repealed XX/XX/XXXX by Ord. No. XXXX, which required parking to be located on the side or behind buildings.”
Committee members suggested to modify The Rural Commercial Design Guidelines and removing the proposed footnote [1] in its entirety.

Section 275-57G. Off-street parking, loading and access.

- (G) Add the footnote “[1]” after the sentence. Also add: “[1] Editor’s Note: The Rural Commercial Design Guide was repealed XX/XX/XXXX by Ord. No. XXXX, which required cross access between neighboring properties”
Committee members suggested removing the proposed footnote [1] in its entirety.

Section 275-59. Architectural design standards.

- (6) Remove the words “also” and “chart” in the last sentence. After the first sentence, include the footnote “[1]”. Also add: “[1] Editor’s Note: The Rural Commercial Design Guide was repealed XX/XX/XXXX by Ord. No. XXXX, which regulated building materials.”
Committee members suggested removing the proposed footnote [1] in its entirety.
- Remove section 275-59C(1)(d)[6][a] through 275-59C(1)(d)[6][a][g].

Kristen stated that this information is being removed because it’s included in the table. Currently there is verbiage section and the table section which has a lot of inconsistencies between the two as sometimes the table would be updated, but not the text and vice versa. For this reason, it is being proposed to have this information in one spot.

Section 275-59. Architectural design standards. Figure VIII-10

- Change “Business Districts” to “Commercial Districts”
- Add column “Institutional Districts”. **Add column “Rural Commercial Area”.**
- Building Walls. Change “Brick – exposed or painted” to “Brick”. Change Rm-1, Commercial, Office, M-1, M-2 and Institutional Districts to read: P (exposed or painted). Change R-6/R-7 to read: P (exposed, no brick painting). Change M-3 to read: P (exposed, no brick painting or CMU allowed).
- Building Walls. Stucco – smooth or sand finish only. Institutional Districts to read: C.
- Building Walls. Change “Native stone” to “Stone-native, natural, veneer or cast”. Institutional Districts to read: P.
- Building Walls. Change “Glass panel system” to “Glass panel system, glass storefront or curtain wall systems”. Institutional Districts to read: P.
- Building Walls. Change “Precast masonry – rough faced for exposed foundation wall only” to “Precast masonry – rough faced”. Change Rm-1, R-6/R-7, Commercial, Office and Institutional Districts to read: P (exposed foundation wall only).
- Building Walls. Change “Precast masonry – rough faced as base course material, not to exceed 15% of total wall surface” to “Precast masonry – rough faced”. Change Rm-1, R-6/R-7, Commercial, Office and Institutional Districts to read: C (as base course material, not to exceed 15% of total wall surface).
- Building Walls. Change “Gypsum reinforced fiber concrete – for trim elements only” to “Gypsum reinforced fiber concrete / Glass Fiber Reinforced Gypsum – for trim elements only”.
- Building Walls. Change “Manufactured cementitious siding” to “Manufactured cementitious siding / Fiber cement board”. Institutional Districts to read: P.
- Building Walls. Change “Cedar shakes” to “Cedar shakes and lap siding”.
- Building Walls. Vinyl siding. Rm-1 District to read: C (only for buildings already using this material). **M-1, M-2, M-3 Districts to read: *.** Institutional Districts to read: C. **Rural Commercial Area to read: *.**
- Building Walls. Change “EIFS (exterior insulated finish systems) – not at ground level, not to exceed 25% of total wall surface” to “EIFS (exterior insulated finish systems) – not at ground level”. Change Rm-1, R-6/R-7, Commercial, Office, M-3 and Institutional Districts to read: C (not to exceed 25% of

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- total wall surface for the entire building). Change M-1 and M-2 Districts to read: C (not to exceed 50% of total wall surface for the entire building).
- Building Walls. Remove column "EIFS (exterior insulated finish systems) – not at ground level, not to exceed 50% of total wall surface".
 - Building Walls. Metal panels. Change Commercial, Office, M-1 and Institutional Districts to read: C. Change M-3 District to read: C (only as an accent).
 - Building Walls. Add "Architectural metal" row. M-3 District to read: P.
 - **Building Walls. Add "Aluminum" row. All Districts to read: *.**
 - Freestanding Walls and Fence. Change "Brick – exposed or painted" to "Brick". Change Rm-1, Commercial, Office, M-1, M-2 and Institutional Districts to read: P (exposed or painted). Change R-6/R-7 to read: P (exposed, no brick painting). Change M-3 to read: P (exposed, no brick painting or CMU allowed).
 - Freestanding Walls and Fence. Change "Native stone" to "Stone-native, natural, veneer or cast". Institutional Districts to read: P.
 - Freestanding Walls and Fence. Change "Precast masonry – rough faced for exposed foundation wall only" to "Precast masonry – rough faced". Institutional Districts to read: P.
 - Freestanding Walls and Fence. Change "Manufactured cementitious siding" to "Manufactured cementitious siding / Fiber cement board". Institutional Districts to read: P.
 - Freestanding Walls and Fence. Add "Architectural metal" column. M-3 District to read: P.
 - Freestanding Walls and Fence. Wood lattice. Institutional District to read: P.
 - Freestanding Walls and Fence. Wood boards. Institutional District to read: P.
 - Freestanding Walls and Fence. Change "Painted or stained composites of wood and plastic" to "Wood and plastic composite (painted or stained)". Institutional Districts to read: P.
 - Freestanding Walls and Fence. Wrought iron. Institutional District to read: P.
 - Freestanding Walls and Fence. Add "Aluminum or decorative steel" row. M-1 and M-2 Districts to read: P. M-3 District to read: P (no chain link).
 - In legend, change "Conditional material" to "Considered material". **Add "*" = Prohibited material".**

Section 275-59. Architectural design standards. (cont.)

- D(3)(b) – add: "*[4] Building facades should be composed to define base, middle, and top elements. The base of the building anchors it to the ground and is the interface between the building and people. The transition between the middle of the building and the base and top should be articulated by the use of contrasting materials, window openings, or ornamental elements. The top terminates the building against the sky and provides an opportunity to create an interesting silhouette.*"
- D(3)(c), add a comma after "B-1" and remove the word "and". Add a comma after "B-2" and insert "B-3 and B-5". In the 2nd sentence, add a comma after "B-1" and remove the word "and". Add a comma after "B-2" and insert "B-3 and B-5".
- Add: D(3)(e) "*R-6 and R-7 Districts. Home construction in the R-6 and R-7 Districts shall utilize architectural materials similar in quality to subdivisions along of Sunny Slope Road. An approval from an architectural review board of the homeowner's association may be required prior to issuance of building permits from the City.*"
- **D(3)(f) add "*Rural Commercial Area. The City shall follow the Rural Commercial Area over an individual zoning district when considering building materials.*"**
- D(4)(a) add the words "*- in wood, stone, brick, precast stone or metal copings*" at the end of the word "capped".

Section 275-60I. Performance Standards.

- I.(6) – Add the footnote "[1]" at the end of the sentence. Also, include the footnote "*[1] Editor's Note: The Rural Commercial Design Guide was repealed XX/XX/XXXX by Ord. No. XXXX, which limited light fixtures to 15 feet in height.*"
Committee members suggested removing the proposed footnote [1] in its entirety.

Section 275-61(2) Signs

- (2)(a) Add the verbiage "*Number of permitted signs by type are listed in Table 275-61-1.*" to the end of the sentence.
- Remove (2)(a)[1] – [2].

Section 275-70. Terms defined.

- Add the following 3 definitions:
PARK - Space designated to serve the recreational needs of the community, as further defined in the Comprehensive Plan.
RESEARCH AND DEVELOPMENT - Research, development, and testing laboratories that do not involve the mass manufacture, fabrication, processing or sale of products.
SPORTS COMPLEX - A group of indoor and/or outdoor sports facilities, refer to section 275-36D(5) regarding Commercial Park / Sports Complexes.

Motion by Alderman Stribl to forward Chapter 275 Zoning Code Updates to Plan Commission with changes discussed for their recommendation to Common Council. Seconded by Mayor Ament.

Motion Passed 2-0.

ADJOURN

Motion by Alderman Stribl to adjourn the Code Committee meeting at 12:37 PM. Seconded by Mayor Ament.

Motion Passed 2-0.

Respectfully Submitted,
Rubina Medina
Deputy Clerk/Licensing Specialist



CITY OF NEW BERLIN
CODE SUBCOMMITTEE MEETING MINUTES
Friday, January 27, 2023
1:00 PM
Zoom Meeting
<https://us02web.zoom.us/j/82592860517>

The Code Committee has satisfied the requirements as directed by the Common Council to hold this meeting via electronic means.

Interested parties may also participate by:

- Downloading the ZOOM app located at <https://zoom.us/> and utilize this unique ID to join: 825 9286 0517
- Following this direct link to the meeting: <https://us02web.zoom.us/j/82592860517>
- Dial by phone: (312) 626-6799 and use Meeting ID: 825 9286 0517

MINUTES

CALL TO ORDER

Mayor Ament called the meeting to order at 1:13 pm.

ROLL CALL; DECLARATION OF QUORUM

Present: Mayor Ament, Ald. Stribl, Nikki Jones, Brian McGrath, Greg Kessler

APPROVAL OF MINUTES

1. January 12, 2023 Code Committee Meeting Minutes
Motion by Mayor Ament to approve minutes. Motion seconded by McGrath. Motion passed 3-0.

NEW BUSINESS

2. DCD1-2202121 2023 Zoning Code Updates

Kristen Hogan provided the zoning code updates to the committee.

Motion by Ald. Stribl to approve the zoning code updates as presented and recommend to the Common Council setting a public hearing date. Motion seconded by McGrath and motion passed 3-0.

ADJOURN

Motion by Ald. Stribl to adjourn at 1:21pm. Motion seconded by McGrath and motion passed 3-0.

ORDINANCE NO. ____

**ORDINANCE TO AMEND CHAPTER 275-43
OF THE CITY OF NEW BERLIN MUNICIPAL CODE
REGARDING REGULATION OF FOOD TRUCKS**

The Common Council of the City of New Berlin do ordain as follows:

SECTION I

Section 275-43B of the Municipal Code of the City of New Berlin is hereby amended to read as follows:

- B. Temporary uses, structures, and special events requiring a permit may include, but are not limited to, festivals, food truck festivals, art/craft fairs, outdoor markets, plant/flower sales, circuses, concerts, wine/food tastings, beer gardens, races, outdoor seating/dining, pop up live music, car shows, fundraisers/outings (e.g., golf outings/company picnics), game day/nights (bingo/trivia), outdoor movie theater, and/or other similar events unless approved as part of an existing plan of operation or an approved calendar of events. All food truck uses in Residential or Park districts are considered an event requiring a Permit in accordance with 275-43H of this Chapter.

SECTION II

Section 275-43H of the Municipal Code of the City of New Berlin is hereby created to read as follows:

H. Food Truck Operation

(1) "Food truck" has the same definition as "Mobile Vendor" under Municipal Code Section 152-5.

~~(1)~~(2) Operators of any food truck which operates within the City of New Berlin shall obtain all necessary Permits from the City Clerk's Office. This includes, but is not limited to, the Direct Sellers License. In addition, the applicant shall provide evidence that they have obtained all necessary Health Permits from governmental entities with jurisdiction.

~~(2)~~(3) The holder of the Food Truck License may only operate in the City of New Berlin subject to the following terms and conditions:

- a. Food trucks are prohibited from operating on City of New Berlin property and on City streets or public rights-of-way (as defined regulated in under Municipal Code Section 152-5D(2)(c)) unless the food truck is participating in a City of New Berlin sponsored event. In the event the event is being conducted in a City of New Berlin public park, permission must be obtained not less than thirty (30) days prior to the event from the Parks, Buildings and Grounds Commission of the City.
- b. Food trucks may not operate on residentially zoned property except during the course of a Special Event approved by the City or where the food truck

is not in operation for more than six (6) consecutive hours. ~~Such a residential use shall require an endorsement to the Direct Seller License evidencing the consent of all contiguous property owners to the property on which the food truck is to operate.~~ In no event shall the food truck begin operations earlier than 79:00 a.m. or operate later than 910:00 p.m. This endorsement may be terminated by the Police Department if the operation of the food truck becomes a nuisance to surrounding properties.

- c. Food trucks may not operate within 200' of an existing restaurant or business which sells food prepared on site.
- d. No food truck may operate within 200' of a residentially zoned property in the City of New Berlin except as expressly provided for in Subsection (b) above.
- e. Food trucks may operate ~~on industrially or commercially zoned properties in all zoning districts other than Residential and Park Districts, including private property and legal parking spaces, subject to Section 152-5(D) of the Municipal Code and authorization of the property owner or their designee.~~ However, such operations shall also require an endorsement to the Direct Seller License and shall register the location, dates and hours of operation. In the event the operation of the food truck becomes a nuisance, the Police Department may terminate the Food Truck Endorsement to the Direct Seller License.

~~Food trucks may operate on private property in zoning districts other than Residential and Park Districts with the authorization of the property owner or their designee. Food trucks may also operate in zoning districts other than Residential and Park Districts from legal parking spaces on the public right of way subject to the prohibitions in and the requirements of Municipal Code Section 152-5(D) are followed.~~

SECTION III

All Ordinances or parts of Ordinances contravening the terms and conditions of this Ordinance are hereby to that extent repealed.

SECTION IV

The several sections of this Ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the Ordinance.

SECTION V

This Ordinance shall take effect upon passage and publication as approved by law, and the City Clerk shall so amend the Code of Ordinances of the City of New Berlin, and shall indicate the date and number of this amending ordinance therein.

PASSED AND ADOPTED by the Common Council this _____ day of _____, 2023.

APPROVED:

Countersigned:

David Ament, Mayor

Rubina Medina, Clerk