

ORDINANCE NO. 2633

City of New Berlin Redevelopment Plan / Ethic Indoor Sports Facility Planned Unit Development

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

SECTION I

WHEREAS, The City of New Berlin (City) has adopted a Comprehensive Plan under Wis. Statutes Sections 62.23 and 66.1001; and

WHEREAS, The City has adopted a Zoning Ordinance under Wis. Statutes 62.23 and does allow planned unit development overlays (PUD) per Section 275-39B(1) of the New Berlin Municipal Code; and

WHEREAS, Aaron Kahle with Kahle Builders LLC has submitted an application for a Planned Unit Development Overlay District located at 5330 S. Racine Avenue (Tax Key #: 1268.960) in accordance with Sections 275-23 and 275-39(B)(1) of the New Berlin Municipal Code; and

WHEREAS, the procedure for the creation of a PUD Overlay District has been followed in compliance with Section 275-22 and 275-23 of the New Berlin Municipal Code; and

WHEREAS, a public hearing was held on June 1, 2020 before the Plan Commission, and;

WHEREAS, based upon the recommendation from the Plan Commission at a meeting held on July 21, 2020 to approve the Ethic Indoor Sports Facility Planned Unit Development, and;

NOW, THEREFORE, BE IT HEREBY RESOLVED AND ADOPTED BY THE CITY OF NEW BERLIN, the Ethic Indoor Sports Facility Planned Unit Development Ordinance is hereby adopted pursuant to Chapter 275-39(B)(1) of the New Berlin Municipal Code as follows:

SECTION II

Planned Unit Development Summary

The purpose of the Planned Unit Development (PUD) is to create a zoning district that allows flexibility from the rigid development standards of underlying zoning districts. This PUD ordinance shall specify all elements of what is to be modified or added to the basic underlying district, and provisions of the underlying basic use district not specifically enumerated as changed, modified, or deleted shall remain in full effect.

Unless specified otherwise by this ordinance, any regulation not listed shall be regulated in accordance with the Zoning Ordinance dated June 11, 2019 and underlying zoning district Section 275-36B(1), Institutional District.

The parcel of land that is the subject of this ordinance is located at 5330 S. Racine Avenue in the City of New Berlin, which is legally described below. The property is approximately 9.15 acres in size.

Legal Description of Parcel to be rezoned to I-1/PUD:

5330 S. Racine Avenue / Tax Key #: 1268-960

PT SE.25 SEC 29 T6N R20E LYING E OF RACINE AVE AND N OF NATIONAL AVE APPROX 8 ACRES EX 1.31 & .81AC TO WAUKESHA CTY DOC #3563674 04/15/2008 UTILITY EASEMENT DOC #3669387 DOC #4372921 11/28/2018 DOC #4383400 02/15/2019

SECTION III

I-1/PUD: Ethic Indoor Sports Facility Planned Unit Development District

The overall purpose of this PUD is to begin to establish a set of parameters and requirements for the creation of an indoor sports facility on the rural west side of New Berlin. Per the plan of operation, the facility will offer indoor fields and court rentals for youth team training as well as a variety of camps and classes for all ages. The facility will also offer adult training memberships and music/school tutoring. Sports medicine, athletic apparel, and a café will also be available for public use.

The I-1/PUD: Ethic Indoor Sports Facility Planned Unit Development District is intended to provide for additional institutional uses consistent with the I-1 Institutional District. The District will allow for indoor recreational uses identified in the plan of operation for Ethic Indoor Sports Facility. This PUD is being created and established expressly for the establishment of the Ethic Indoor Sports Facility. Changes including a future name change or ownership would not require an amendment to the PUD as long as the exact same plan of operation is adhered to. Any additions or changes to the uses listed below, or not listed in the approved plan of operation, would require the applicant and/or property owner to amend this PUD. As a result, no additional uses would be approved without first amending this PUD.

Unless specified otherwise by this section, all new development shall be in accordance with the I-1 Zoning District, per Section 275-36B(1) Institutional District.

1. Principal Uses (See also Chapters 275-36C, 275-41G and Table 275-36-1)
 - a. Indoor sports facility adhering to the following limitations and plan of operation.
2. Accessory Uses (As identified in applicants plan of operation) (See also Chapters 275-36C, 275-41G and Table 275-36-1)
 - a. Café – Beverages and prepared foods only. No food prep to occur on-site.
 - b. Tutoring services
 - c. Sports clinics and classes
 - d. Team practices
 - e. Membership based health and fitness uses
 - f. Pro shop / athletic apparel
 - g. Sports medicine
 - h. Tournaments and sporting events
3. Conditional Uses (See also Chapters 275-36C, 275-41G and Table 275-36-1)
 - a. Conditional uses are prohibited within the PUD. Any changes would require amending this PUD.
4. Prohibited Uses
 - a. Outdoor courts and/or ball fields
 - b. Outdoor storage – Use and storage of hazardous materials
 - c. Central composting

- d. Hospitals
 - e. Recycling centers
 - f. Regional utility facility
 - g. Dormitories
 - h. Assisted living facilities
 - i. Multi-family residential
5. Lot Area and Width (See also Chapters 275-44, 275-45, and 275-46)
 6. Setback and yards (See also Chapter 275-36D and Table 275-36-2)
 - a. No portion or any part of this building shall exceed 45'.
 7. Lot Coverage (See also Chapter 275-36D and Table 275-36-2)
 8. Time Limits (See also Chapter 275-23(F))
 - a. If the development has not commenced, as evidenced in the construction of the footings and foundation for the new building within one calendar year from the date of publication of this ordinance, the Ethic Indoor Sports Facility Planned Unit Development Overlay District ordinance shall expire and become null and void. The underlying basic use district shall be in force.
 - b. If the developer requires an extension of the time limits, any extension shall be requested by the developer in writing and sent via Certified Mail to the Department of Community Development not less than 60 days prior to the expiration of this PUD. The Common Council may allow multiple extensions.
 9. Use and Site Plan Review (See also Chapters 275-24 and 275-53)
 - a. No principal or accessory use, development or structure shall hereafter be located, erected, moved, reconstructed, extended, enlarged, structurally altered, occupied, or reoccupied, no site or premise shall be altered, used, changed, modified, occupied, or building permit approved until after the owner has applied for and received approval of the application for the zoning permit/use approval. An approved PUD Ordinance shall not be construed as a Zoning Permit or any other approval until the Plan Commission has granted an approval and staff has determined that all conditions of that approval have been satisfied.
 10. Parking & Circulation (See also Chapter 275-57)
 - a. The City of New Berlin reserves the right to review any substantiated complaints and forward the matter to the Plan Commission for review.
 11. Architecture (See also Chapter 275-59 & Rural Commercial Design Guide)
 - a. No principal or accessory use, development, structure or sign shall hereafter be located, erected, moved, reconstructed, extended, enlarged, structurally altered, occupied, or reoccupied and no site or premise shall be altered, used, changed, modified, building permit approved, or occupied until after the owner has applied for and the Architectural Review Committee of the Plan Commission has reviewed and approved the architecture for the zoning permit/use approval.

- b. Buildings shall be constructed to be harmonious with their natural and built surroundings including adjacent properties, while avoiding repetition and monotony. Building designs shall utilize materials that reflect a rustic rural character. Cedar or clapboard siding, stone and brickwork or other comparable materials that achieve the same quality in appearance are acceptable. Aluminum and vinyl siding shall be prohibited. New buildings shall correspond in height, width, proportion, relationship to street, roof forms, composition, rhythm, proportion of openings, materials and color to the other buildings in the district. All designs are subject to review and approval by the Department of Community Development and Plan Commission. Plans should show building elevations of structures to either side of the proposed structure, and must show the compatible scale.
 - c. Decorative metal panels may be considered by the Architectural Review Committee.
12. Signage (See also Chapter 275-61 & Rural Commercial Design Guide)
- a. All signs shall meet requirements set forth in the Rural Commercial Design Guide.
 - i. Signage shall be designed in unity with the building design through the use of the same or similar materials and colors. Ground, monument signs, or wall mounted signs made of wood, hanging from a wooden or wrought iron mount are acceptable. Signs that suit the architectural features of the building are acceptable. Neon tubed exterior accent light, external neon tubed signs and internally illuminated signs are not permitted. Signage shall meet the requirements of § 17.08 (10) in its entirety.
 - b. Signs located within the Rural Commercial Area shall not include external neon tube lighting or internal illumination. The Rural Commercial Area is defined in the City of New Berlin Comprehensive Plan, Chapter 12. Please refer to that document for specific information. (Zoning Code 275-61F(2)(c))
 - c. EMCs are not allowed within the Rural Commercial Area. [Zoning Code 275-61(1)(g)[9] and 275-61F(2)(c); City of New Berlin Comprehensive Plan, Chapter 12; and Figure X.]
 - d. All new signs and/or replacement of existing signs located along arterials or major thoroughfares, including National Avenue and Racine Avenue, shall be placed on a monument base constructed of the same material and color or shall enhance the exterior architecture of the principal building. (Zoning Code 274-61(1)(c)[1])
 - i. The width of the sign base shall be adjusted to match the width of the sign box/sign panel. The sign base shall be a minimum of 18 inches tall. The monument sign shall not exceed eight feet in height. The sign shall be set back entirely outside the ultimate right-of-way and vision triangle.
 - ii. Monument signs shall not exceed 32 square feet in face area per side. The face area includes all surface area of the signage box and sign face but excludes the surface area of the signage base described.
 - iii. Address plaque or numbers shall be required on the monument base or incorporated onto the sign face.
 - iv. The applicant may request a waiver from the Plan Commission for the requirement for a monument sign. If a waiver is granted, the monument sign may not be substituted for an additional wall sign.
13. Property Maintenance
- a. The owner or occupant of the premises or his/her agent shall maintain the structures and exterior property in compliance with these requirements.

- b. The owner shall maintain the property in compliance with all provisions of the New Berlin Municipal Code; use, site & architectural approval, and/or a plan approved as part of a Developer's Agreement approved by the Common Council. If the property is not found to be in compliance with the code, zoning / conditional use approval, the approved plans and/or the Developer's Agreement, the city may take action to correct the situation, after providing the owner or operator with notice of the defective condition and an opportunity to cure the alleged defective condition. Costs of any such corrective action by the City shall be assessed as a special charge against the property, to be added to the property tax bill pursuant to Section 66.0627 of the Wisconsin Statutes.
- c. All vacant structures and premises thereof shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health and safety.
- d. Vacant or abandoned properties, including, but not limited to, buildings, storm water, parking, and landscaping, shall be maintained for the safety of the community, the local environment, and the visual impacts to the surrounding properties. Maintenance includes watering, snow removal, trimming and pruning landscaping, continued screening of dumpsters, promptly repairing any building or site damage, and prompt removal of graffiti. Any covering of glass surfaces shall be done in such a way as to blend in with the rest of the building and in a visually attractive manner. Chain-link fencing to exclude trespass shall be permitted for not more than 120 days, after which it shall be removed or replaced with visually attractive fencing.
- e. The owner of the vacant property and/or building shall remove all signs from the building and repaint the wall area behind the signs if this area has faded leaving an image of the signs.
- f. The owner of the vacant property and/or building is responsible for keeping the same free of weeds, dry brush, dead vegetation, trash, junk, debris, building materials, earth products, any accumulation of newspapers, circulars or flyers, discarded items including but not limited to furniture, clothing, appliances or any other items that give the appearance that the property or building is vacant.
- g. In the absence of an active zoning permit, the owner of the vacant property and/or building shall keep vestibule and/or emergency lights illuminated in the interior of the building to offer a positive appearance and safe condition of the property. Parking lot lighting shall remain illuminated.
- h. The owner(s) of the vacant property and/or building is responsible for maintaining existing landscaping and landscaping required as a condition of a permit and shall not permit the landscaping to become overgrown or die. If the landscaping becomes overgrown or dies, the owner is responsible for replacing the previously existing landscaping in accordance with Section 275-56C(14). Landscaping includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges, trees or other similar plantings.
- i. The owner of the vacant property and/or building shall secure the same so that it is not to accessible to unauthorized persons, including but not limited to the closure and locking of windows and doors (walk through, sliding and garage) and any other opening of such size that may allow a child to access the interior of a structure; chaining or padlocking gates, and repairing fencing. Broken windows shall be secured by means of re-glazing with undamaged glass or other permanent material, and not by cardboard, plywood or other temporary means except as necessary temporarily for not more than 10 business days while awaiting re-glazing.

- j. The property owner may display one professionally designed sign, consistent with local sign ordinances, not to exceed 32 square feet in area at the entrance of the building, which offers contact information and a statement that the building is available for lease.
- k. If the owner of the property or building is an entity or does not reside within 50 miles of the City limits, the owner shall contract with a person to provide property management to perform weekly inspections to verify that all requirements of this ordinance, enforcement notice, and any other applicable laws are being met. The property shall be posted with name and 24-hour contact phone number of the local property management representative.

14. Policies

- a. Any proposed changes to the use or plan of operation may require a neighborhood meeting.
- b. No expansion permitted for industrial uses.
- c. Additional uses or intensity of uses shall not have a negative impact on the level of service. LOS shall be no worse than a level C.

SECTION IV

WHEREFORE, The I-1/PUD: Ethic Indoor Sports Facility Planned Unit Development Overlay District Ordinance having been approved as a Planned Unit Development on August 6, 2020, pursuant to Chapter 275-23 of the New Berlin Zoning Code, the Common Council hereby adopts this Ordinance and approves the rezoning of land described in Section II to I-1/PUD to be named the Ethic Indoor Sports Facility Planned Unit Development Overlay District, pursuant to the conditions set forth herein.

The Mayor and City Clerk are authorized to execute this Ordinance No. 2633 on behalf of the City of New Berlin.

This ordinance shall take effect upon the passage and publication as required by law, and upon the final approval of the Development Plans as recommended by the Plan Commission, and the City Clerk shall so amend the Code of Ordinances and zoning map of the City of New Berlin, and shall indicate the date and number of this amending ordinance therein.

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


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

PASSED AND ADOPTED by the Common Council this 6th day of August, 2020.

APPROVED:


David A. Ament, Mayor

Countersigned:


Georgia Stanford, City Clerk

APPENDIX A

ETHIC INDOOR SPORTS FACILITY

PLAN OF OPERATION

Ethic Indoor Sports Facility, LLC

Plan of Operations

Project Description

The clean and rural design of this indoor sports facility development includes 153,000 sq ft of indoor training and recreational space for families and teams to enjoy. Ethic will offer indoor fields and court rental for youth team training, in addition to a variety of camps and classes for all ages. Ethic will host indoor tournaments and events throughout the year for baseball/softball, basketball, and volleyball. Ethic will not only be an option for youth, but will also be available for adult training memberships, including the use of the gym or classes. Ethic will also offer music and school tutoring to meet the needs of all families. In addition, sports medicine, athletic apparel, and a café will be available for public use.

Hours of Operation

The proposed hours for the gym use will be:

*Monday-Sunday 5am-10pm

The proposed hours for the building/facility will be:

*Monday-Sunday 8am-10pm

Staff/Customer Parking and Operations

The proposed staff for the development will be 7-10 employees Monday-Friday 8am -10pm. Customer parking for the site will allocate 260-270 spots to date. Peak hours of the facility will be from 5-10pm M-F from Oct-April.

Site Maintenance

During the spring, summer, and fall months, a hired service will provide lawn and landscaping maintenance on a regular basis. During the winter months, a hired service will provide snow clearing/plowing/salting on an as needed basis.

Site Security

The facility's exterior perimeter will host motion-activated cameras that will be recorded. The interior of Ethic will have recording security cameras throughout the building for the safety of all clients. Card reader entry will be used for the gym and front entry. The parking lot and facility interior will be well lit with minimal light pollution to neighboring properties.