

MEMORANDUM OF STAFF COMMENTS

TO: Zoning Board of Appeals
FROM: Maureen Giusti, AICP, Acting Town Planner/ZEO
DATE: April 23, 2020
RE: #2020-07
APPLICANT: Hoa T. Nguyen, Esq for Karen Hoang
ADDRESS: 50 Butternut Lane
Map 8-1, Block 29, Lt 84
ZONE: R-15

Proposal

Application – Hoa T. Nguyen, Esq. is appealing the decision of the Zoning Enforcement Officer to issue a Cease and Desist Order to Karen Hoang, owner, dated 3/5/2020 per Berlin Zoning Regulations §XV. regarding the keeping of chickens/poultry at the residential property in the R-15 zone.

Zoning Requirements:

§XI.C.8. Agriculture. *The Keeping of Animals.*

§XV. Zoning Board of Appeals.

A.1. Powers and duties. Appeals.

B. General rules. Appeals.

- Notice of Zoning Violation Cease and Desist order (NOV) was issued on March 5, 2020.
- The letter was sent Certified Mail, postmarked March 9, 2020 and regular mail. The Certified letter was returned, notified – unable to deliver, received April 01, 2020.
- The applicant contacted the zoning office and appealed the order with application dated March 21, 2020 received on April 1, 2020.

In accordance with Berlin Zoning Regulations §XV.A. “1. *Appeals.* The ZBA shall have the authority to hear and decide upon any appeal where it is alleged that there is an error in the order, requirements, decision or determination of the ZEO. No question of hardship shall be involved in such an appeal, and the action of the ZBA thereon shall be limited to the question of whether or not, and to what extent such order, requirement, decision, or determination was a correct interpretation of the subject provision of these regulations.”

Please note that appeals require the file be copied to the ZBA.

Staff Comments

The appeal application is believed to have been properly received, while stamp received on April 1, 2020, which is more than 15 days from the postmark; Planning and Zoning staff was not available to stamp the application the week prior, due to a death in the family and Coronavirus emergency. The date of delivery to Town Hall cannot be confirmed. The Town Hall has been closed to public traffic since March 18, 2020. Mr. Nguyen, attorney for the owner, responded to the order by telephone to discuss the appeal application process and spoke to staff several times. (phone notes attached).

The applicant has not provided a reasoning for the appeal in accordance with BZR §XV.B.1. Staff believes the comments, below, support issuing and upholding the order.

The property is in the R-15 Single-family Residential Zone, which is subject of the allowed uses and accessory uses listed in BZR §V.A. The property is developed and used as a single-family dwelling. Accessory uses in the zone do not include the keeping of animals.

Staff has received complaints regarding chickens housed on the property. The received complaint included ongoing chickens, hawks, rats being attracted due to the chickens and that carcasses were being burned on open fires. The Notice of Violation was sent in response to an initial complaint received May, 2019 and last reiterated in-office the week of March 5, 2020. I recalled the complaint. I was unable to immediately find if an NOV had been sent and determined preparing a new order, even if one had been sent without receiving response or compliance, was appropriate due to the lapsed time since the previous complaint. Research of the property card found a chicken coop listed as a structure on the property.

The applicant replied to the order and stated the owner had the chickens for some time. He indicated that they were pets. He was directed to BZR §XI.C.4.h. and XI.C.8. regarding the keeping of poultry. The Keeping of Animals section was amended several years ago. The keeping of animals, and specifically addressing poultry, would require designation as a farm and would not be allowed on hobby farms.

The order would be correct as:

1. As noted by the applicant, there are chickens housed at the property;
2. This single-family residential property improved with a house on 0.35 acre would not qualify as a farm; and,
3. The R-15 residential zone does not allow for keeping of animals, including poultry as an accessory use.

Therefore, the violation was correctly issued.

The Town of Berlin Plan of Conservation and Development, Section II, Strategic Outline for Implementation, Strategy 1: Coordinate the Regulatory Structure to Support the Plan, 3) states: Any variance granted by the Zoning Board of Appeals should be consistent with the standards imposed by Connecticut General Statutes in which a hardship exists owing to conditions affecting a specific parcel of land, and the variance which is granted should be consistent with the goals and policies of this plan and the intent of the zoning regulations.

Complaint Action Summary

Complaint Number: 2019-0288

Complaint #: 2019-0288

Type: Keeping of Animals

Status: Open

Location: 1050220, 50 BUTTERNUT LN

Identifier: 8-1/29/84/

Open Date: 06/20/19

Owner: Karen Hoang

Complainant:

Nature Of Complaint: Chickens being kept on property

Action Type	Action Date	Action Information	Inspector
Letter Received	05/20/19	<i>Complaint</i>	
Phone Call	06/20/19	Note 1: Complainant in office - previously reported. Neighbor still has chickens in yard.	
Notice of Violations	03/05/20	Contact: Karen Hoang	M Giusti
Letter Received	03/05/20	<i>Complaint</i>	M Giusti
Violation	03/05/20	Code: X. Keeping of Animals Status: Open Comply By: 03/23/20	M Giusti
Phone Call	03/10/20	Note 1: return call 3/12/2020 directed owner's attorney to BZR Sec XI.c4.h. & XI.C.8 regarding Keeping of animals.	M Giusti
Phone Call	03/20/20	Note 1: Spoke with attorney - expect ZBA appeal	M Giusti
Letter Received	04/01/20	<i>Appeal of NOV</i>	M Giusti



Town of Berlin

ZBA # 2020-07

Planning and Zoning Department

240 Kensington Road
Berlin, Connecticut 06037
www.town.berlin.ct.us

Town of Berlin
Received

ZONING BOARD OF APPEALS APPLICATION

APR 01 2020

- ☐ Special Permit ☐ Variance ☒ Appeal of ZEO
☐ Motor Vehicle Location ☐ Alcohol Uses Location ☐ Other / Determination

Property Owner(s): Karen Hoang

Project Address*: 50 Butternut Ln Berlin CT 06037

Map: 8-1 Block: 29 Lot: 84 Zone(s): R16 Lot Area: 0.35 acres

B-15mkg

Please select all relevant items below:

- ☐ Supplemental Information Is Required For:
ZBA Special Permit / Sale of Alcoholic Beverages Location / Motor Vehicle Uses Location
☐ Inland Wetlands and Water Course Commission review needed
☐ Planning and Zoning Commission review needed
☐ Property is within 500 feet of a Municipal Boundary of _____
☐ Previous Zoning Board of Appeals actions on this property:

Date(s) & Purpose(s): _____

Applicant Information

Name: Hoa T Nguyen

Firm Name: Law office of Hoa Nguyen LLC

Street Address: 427 New Park Ave

City: West Hartford ST: CT Zip: 06110

Email: hnguyen@htdnlaw.com

Phone: (203) 589-2702

Signature: [Signature]

Date: 3/21/2020

Property Owner(s) Information (If Not the Applicant)

Name: Karen Hoang

Principal: _____

Street Address: 50 Butternut Ln

City: Berlin ST: CT Zip: 06037

Email: dr.karen04@yahoo.com

Phone: 860-205-8488

*Letter of Authorization Required

ZBA action is requested pursuant to Berlin Zoning Regulations Section(s): _____

*Any town official and/or employee who the town deems necessary may enter the property to verify information submitted with this application.

Brief description of the proposal: Appeal of zoning cease + desist
order dated 3/5/2020

Town of Berlin

VARIANCE APPLICATIONS: For relief of: _____

requirement.

Requested requirement: _____

Reason/Description of Hardship (REQUIRED): _____

Planning & Zoning Department
Berlin, Connecticut

MOTOR VEHICLE USE LOCATION¹:

The first page of the State DMV application is required to be submitted with this application

<input type="checkbox"/> New Car Dealer	<u>Number of Service Bays</u>	<u>Parking Required</u>	<u>Parking Provided</u>
<input type="checkbox"/> Used Car Dealer	_____	_____	_____
<input type="checkbox"/> General Repairer	_____	_____	_____
<input type="checkbox"/> Limited Repairer	_____	_____	_____
<input type="checkbox"/> Gasoline Station	_____	_____	_____

SALE OF ALCOHOLIC BEVERAGES LOCATION¹

The first page of the State Liquor Permit application is required to be submitted with this application

Type of State Liquor Permit:

☐ On -Premises Permit: Type _____
☐ Off-Premises: Type _____
☐ Other: Explain _____

To be completed by P&Z staff only:

Fee Paid \$ _____ (Refer to current Fee Schedule)

ZBA # _____ - _____ - _____

Received by: _____

Scheduled on ZBA Agenda of: _____

ZONING BOARD OF APPEALS DECISION:

Plan Title & Date: _____

Town of Berlin
Received

MAR 31 2020

Planning & Zoning Department
Berlin, Connecticut

Letter of Authorization

Property Owner: Karen Hoang

Principal: _____

Subject Address: 50 Butternut Ln Berlin CT

Applicant: Hoa Nguyen

I, Karen Hoang hereby give consent to Hoa Nguyen, to
(Current Owner or Principal) (Applicant)

apply to all relevant Town of Berlin land use Boards and Commissions for

appeal of ZEO at the property located at 50 Butternut Ln,
(Purpose of Application) (Address &/or Map Lot Block)

Berlin Connecticut.

In addition I consent to allow any town official and/or employee that the town deems necessary the ability to enter said property to verify any information submitted with corresponding application.

Sincerely,


Signature

3/21/2020
Date



Town of Berlin

Planning and Zoning Department

240 Kensington Road
Berlin, Connecticut 06037
www.town.berlin.ct.us

ZBA # _____ - _____ - _____

Town of Berlin
Rec'd

APR 01 2020

Planning & Zoning Department
Berlin, Connecticut

ZONING BOARD OF APPEALS CHECKLIST

Project Address: 50 Butternut Ln Berlin CT 06037

All applications shall be submitted to Planning and Zoning staff during regular office hours.

Items To Be Submitted:

- ☒ 1. One original completed Zoning Board of Appeals Application form with original applicant signature.
- ☐ 2. Notarized Letter of Authorization to act on behalf of the certified property owner(s) for matters related to this application if required.
- ☐ 3. Eleven copies of a zoning location survey certified by a surveyor licensed in the State of Connecticut depicting property boundaries and the location of all structures. Any item requiring a variance from the Berlin Zoning Regulations shall be shown with exact dimensions. The plan is to be of a readable scale. Plans larger than 11"x17" are to have each set individually folded with title block facing outward.
- ☐ 4. Eleven sets of architectural plans including all floor plans, and elevations. The plan is to be of a readable scale. Plans larger than 11"x17" are to have each set individually folded with title block facing outward.
- ☒ 5. One copy of the Field Card obtained from the Assessor's office.
- ☐ 6. A list obtained from the Tax Assessor's office of the names and mailing addresses of the owners of all land included within the application and of all properties:
 - A. For Location Approvals and Special Permits: within 500 feet or less distant therefrom,
 - B. For Variances: within 250 feet or less distance therefrom, all as shown on the most recent records on file in the town tax assessor's office.
 - C. For Appeals: Not required
- ☐ 7. Proof of mailing in the form of United States Post Office *Certificate of Mailing* of notification of said pending application to owners of each such property on the list no more than seven (7) days prior to submitting the application and in no case less than ten (10) days before the opening of the public hearing. If Required.

☐ 8. Supplemental Forms as required for the type of application.

☒ 9. Required fee submitted at time of application (see fee schedule).

Town of Berlin
Received

APR 01 2020

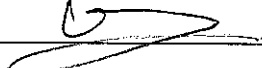
☐ 10. **To be completed by Planning and Zoning staff:**

It is the belief of staff that this application is incomplete because of the failure of the applicant to provide the materials referred to above. This application will be reviewed by the ZBA and a decision made as to whether it is complete or incomplete.

Items missing include:

ADDITIONAL REQUIREMENTS TO BE COMPLETED BY APPLICANT:

- ☐ 11. Field marking or staking of proposed work shall be completed by the applicant no less than 10 days prior to the opening of the public hearing.
- ☐ 12. Posting of a sign providing notice of a public hearing will be required in compliance with Section XII.C.F. of the Zoning Regulations. If Required.

Applicant Signature:  Date 3/21/2020

Staff Signature: _____ Date _____



Town of Berlin

Planning and Zoning Department

240 Kensington Road
Berlin, Connecticut 06037
www.town.berlin.ct.us

Planning and Zoning Commission
Zoning Board of Appeals
Conservation Commission
Historic District Commission

March 5, 2020

SENT VIA:

CERTIFIED MAIL # 7018 0040 0000 7412 7180

AND REGULAR MAIL

Town of Berlin

Received

APR 01 2020

Planning & Zoning Department
Berlin, Connecticut

Karen Hoang
50 Butternut Lane
Berlin, CT 06037

NOTICE OF ZONING VIOLATION CEASE AND DESIST ORDER

Pursuant to the authority vested in me by the Zoning Regulations of the Town of Berlin, Connecticut, you are hereby ordered and directed to discontinue and remedy the violations at the property identified as **50 Butternut Lane, Map 8-1, Block 29, Lot 84** within fifteen (15) days.

The following violations has been reported and found through inspection and/or research for the purpose of determining compliance with the Berlin Zoning Regulations (BZR).

- Keeping of chickens/poultry

Which is a violation of BZR §XI.C. Agriculture

You **MUST** remove the chickens from the property.

Failure to comply with this order by March 23, 2010 will result in further enforcement action, which may include citation fines as provided by Berlin Ordinance No.5/96 – Berlin Municipal Code Chapter XIX.§19-22 and Connecticut General Statutes §8-12.

Thank you in advance, for your anticipated cooperation in resolving this matter. Please contact this office ASAP to discuss your compliance plan and schedule reinspection. The zoning regulations are available online or in Berlin Town Hall, Room 7. You have the right to appeal this order by application to the Zoning Board of Appeals within 15 days of receipt per CGS §124 and BZR §XIV.

Maureen K. Giusti, AICP
Acting Town Planner & Zoning Enforcement Officer

Town of Berlin

Geographic Information System (GIS)



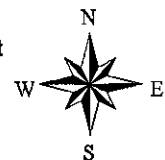
Date Printed: 4/23/2020



MAP DISCLAIMER - NOTICE OF LIABILITY

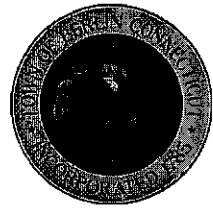
This map is for assessment purposes only. It is not for legal description or conveyances. All information is subject to verification by any user. The Town of Berlin and its mapping contractors assume no legal responsibility for the information contained herein.

Approximate Scale: 1 inch = 150 feet

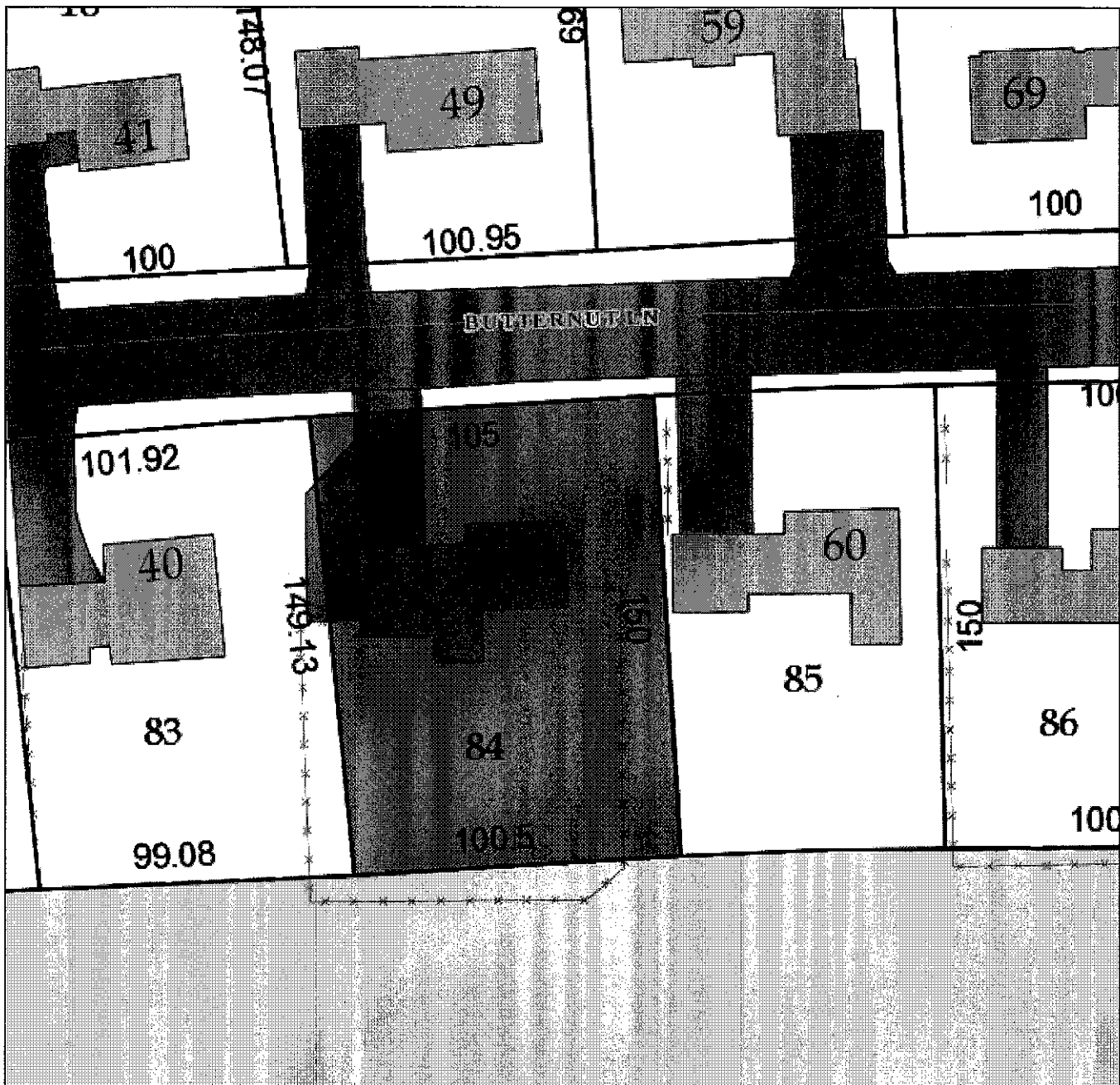


Town of Berlin

Geographic Information System (GIS)



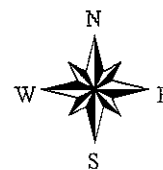
Date Printed: 10/24/2019



MAP DISCLAIMER - NOTICE OF LIABILITY

This map is for assessment purposes only. It is not for legal description or conveyances. All information is subject to verification by any user. The Town of Berlin and its mapping contractors assume no legal responsibility for the information contained herein.

Approximate Scale: 1 inch = 50 feet



[illegible]

A black and white photograph of a large, multi-story brick building, likely a school or institutional structure, with a prominent chimney and dormer windows. The building is surrounded by bare trees, suggesting a winter or late autumn setting. A vintage car is parked on the street in front of the building.

Print Date: 03/05/2020 21:36

CURRENT OWNER	TOPO.	UTILITIES	STRT./ROAD	LOCATION	Description	Code	Appraised Value	Assessed Value
HOANG KAREN 50 BUTTERNUT LN KENSINGTON, CT 06037 Additional Owners:								
SUPPLEMENTAL DATA								
Other ID: 08-1 0029 000084			ASSOC PID# GIS ID: 8-1-29-84	SALE DATE 10/4	VIA SALE PRICE V.C.	Total	322,800	226,000
RECORD OF OWNERSHIP								
BK-VOL/PAGE	SALE DATE	% C.	ST.	Factor Idx	Adj.	Notes- Adj.	Special Pricing Spec Calc	S Adj Fact
EXEMPTIONS								
Type Description	Amount Code	Description Number Amount Comm. Int.	OTHER ASSESSMENTS					
NBHD/SUB 1064/A	NBHD Name Street Index Name Tracing Batch	Total:						
ASSESSING NEIGHBORHOOD								
NOTES								
APPRaised VALUE SUMMARY								
Appraised Bldg. Value (Card)								
Appraised XF (B) Value (Bldg)								
Appraised OB (L) Value (Bldg)								
Appraised Land Value (Bldg)								
Special Land Value								
Total Appraised Parcel Value								
Valuation Method:								
Adjustment:								
Net Total Appraised Parcel Value								
VISIT/CHANGE HISTORY								
Permit ID Issue Date Type Description	Date	Type IS ID Cd.	Purpose/Result					
LAND-LINE VALUATION SECTION								
B Use # Code	Zone D Front Depth Units Price Unit	I Factor S.A.	C ST Factor Idx	Adj.	Notes- Adj.	Spec Use Spec Calc	S Adj Fact	Land Value
Total Card Land Units: 0.00 AC Parcel Total Land Area: 0.35 AC Total Land Value: 0								

3/17

FRAN -

3/18 no answer

If she calls back +

I'm not here

Talked to Anthony

3/20/2020

Hoa Nguyen

203-589-2702

filing an appeal of C+D

• form on line

• fee?

Town Website

Planning + Zoning Department

bottom of page - right

forms & application

0210

See CDA 2019

res. starting p. 231

bottom of page

CDA Application Pkg.

3/10

(va) (b.in)

Atty Hoa Nguyen

LLO

W.H.S.D.

427 New
Park

06110

re: Client's C+D order

50 Butterhut

203-589-2702

Spoke

3/12/2020

guided him to
X1 C-4.7 and X1 C-58

Expect 3/20/2020
ZBA Appeal
Application
by mail or email
as office is
closed to public

file



Town of Berlin

Planning and Zoning Department

240 Kensington Road
Berlin, Connecticut 06037
www.town.berlin.ct.us

Planning and Zoning Commission
Zoning Board of Appeals
Conservation Commission
Historic District Commission

March 5, 2020

SENT VIA:

CERTIFIED MAIL # 7018 0040 0000 7412 7180

AND REGULAR MAIL

Karen Hoang
50 Butternut Lane
Berlin, CT 06037

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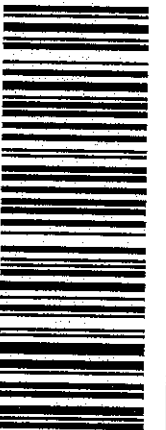
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Maureen K. Giusti, AICP
Acting Town Planner & Zoning Enforcement Officer

Town of Berlin

Planning and Zoning Department
240 Kensington Road
Berlin, CT 06037

7018 0040 0000 7412 7180



REPORT
03/09/2020
\$006.90
ZIP: 06037
041812741800

NOTIFIED

MAR 11 REC'D

Town of Berlin
Received

APR 01 2020

KAREN HOANG
50 BUTTERNUT LANE
BERLIN, CT 06037

Planning & Zoning Department
240 Kensington Road
Berlin, CT 06037

06037-2655

EC: 06037265599 *0344-07254-08-22

NOT DELIVERABLE AS ADDRESSED
RETURN TO SENDER
UNABLE TO FORWARD

NIXIE 061 FEB 1 0003/28/20

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input checked="" type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$



Postage

Total Postage: KAREN HOANG

Sent To: 50 BUTTERNUT LANE

Street and Apt. BERLIN, CT 06037

City, State, ZIP

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

0872 2142 0000 0400 9102



Town of Berlin

Planning and Zoning Department

240 Kensington Road
Berlin, Connecticut 06037
www.town.berlin.ct.us

Town of Berlin
Received

OCT 24 2019

Planning & Zoning Department
Berlin, Connecticut

ZONING COMPLAINT FORM

Property Address of Violation: 50 Butternut Ln

Type of Violation:

<input type="checkbox"/> Inoperable Vehicle	<input type="checkbox"/> Property Overgrown	<input checked="" type="checkbox"/> Keeping of Animals
<input type="checkbox"/> Vacant Building/ Unsafe	<input type="checkbox"/> Unsightly materials/ Junk	<input type="checkbox"/> Not Allowed Use in Zone
<input type="checkbox"/> Work Without Permit	<input type="checkbox"/> General	<input type="checkbox"/> Other: _____

Detailed Description of the Problem/Issue:

(Please attach any photos or additional information as necessary):

ongoing chickens on property
~~Hawks / rats / burning carcasses on~~
~~open fire~~

Contact Information*

Name: _____
Street Address: _____ City: _____
Email: _____ Phone: _____
Signature: _____ Date: _____

* Accurate contact information is required to process this form and reported problem. Any town official and/or employee that the town your property to verify information submitted with this form.

Please be aware that you will not necessary be contacted unless a is needed.

3/5/2020
Chickens in neighbors
Promised to send letter by 3/10/2020

To be completed by P&Z staff only:

Photos/ Additional Information Submitted: Yes / No

Complaint No. _____

Initial Investigation Date: _____

Letter sent months ago?
check status!



Town of Berlin

Planning and Zoning Department

240 Kensington Road
Berlin, Connecticut 06037
www.town.berlin.ct.us

ZONING COMPLAINT FORM

Property Address of Violation: 50 Butternut Lane

Type of Violation:

<input type="checkbox"/> Inoperable Vehicle	<input type="checkbox"/> Property Overgrown	<input checked="" type="checkbox"/> Keeping of Animals
<input type="checkbox"/> Vacant Building/ Unsafe	<input type="checkbox"/> Unsightly materials/ Junk	<input type="checkbox"/> Not Allowed Use in Zone
<input type="checkbox"/> Work Without Permit	<input type="checkbox"/> General	<input type="checkbox"/> Other: _____

Detailed Description of the Problem/Issue:

(Please attach any photos or additional information as necessary):

Old Complaint (last year! 2018)
chicken housed on property

Contact Information*

Name: neighbor in office
Street Address: _____ City: _____ ST: _____ Zip: _____
Email: _____ Phone: _____
Signature: _____ Date: _____

* Accurate contact information is required to process this form and launch an investigation of the reported problem. Any town official and/or employee that the town deems necessary may enter your property to verify information submitted with this form.

Please be aware that you will not necessary be contacted unless additional details or information is needed.

To be completed by P&Z staff only:

Photos/ Additional Information Submitted: Yes / No

Complaint No. _____

Initial Investigation Date: 6/20/19 entered in IPS



Town of Berlin

Planning and Zoning Department

240 Kensington Road
Berlin, Connecticut 06037
www.town.berlin.ct.us

Town of Berlin
Received

MAY 20 2019

ZONING COMPLAINT FORM

Planning & Zoning Department
Berlin, Connecticut

Property Address of Violation: 50 Botternot Lane

Type of Violation:

<input type="checkbox"/> Inoperable Vehicle	<input type="checkbox"/> Property Overgrown	<input checked="" type="checkbox"/> Keeping of Animals
<input type="checkbox"/> Vacant Building/ Unsafe	<input type="checkbox"/> Unsightly materials/ Junk	<input type="checkbox"/> Not Allowed Use in Zone
<input type="checkbox"/> Work Without Permit	<input type="checkbox"/> General	<input type="checkbox"/> Other: _____

Detailed Description of the Problem/Issue:

(Please attach any photos or additional information as necessary):

chickens in back yard, chicken coop, attracting rats

Contact Information*

Name: McCrann

Street Address: _____ City: _____ ST: _____ Zip: _____

Email: _____ Phone: _____

Signature: _____ Date: _____

* Accurate contact information is required to process this form and launch an investigation of the reported problem. Any town official and/or employee that the town deems necessary may enter your property to verify information submitted with this form.

Please be aware that you will not necessary be contacted unless additional details or information is needed.

To be completed by P&Z staff only:

Photos/ Additional Information Submitted: Yes / No

Complaint No. _____

Initial Investigation Date: _____