

Text Amendment – BZR §VII

Planning and Zoning Staff

Modify Berlin Zoning Regulation Section VII. Industrial Zones

As relating to outdoor storage

PROPOSAL

Corporation Counsel has been working with staff preparing the proposed amendment to clarify and update the industrial storage outdoor regulations. The proposed amendments are a result of several work sessions at Commission meetings.

STAFF COMMENTS

1. The Capitol Region Council of Governments written review and comment is pending. Verbal comment has reflected no apparent conflict with regional plans and policies or the concerns of neighboring towns.
2. The Commission should determine if the proposed amendment is consistent with the Plan of Conservation and Development.

BACKGROUND AND REASONING

Provisions in the Regulations for outdoor storage for industrial uses have been confusing to administer. Permitted industrial uses operations have evolved and permitted principal uses have been added over time causing additional confusion with older language. One of the notable difficulties in administration and clarity in the existing regulations is that subsection G, indicates outdoor storage is permitted, causing confusion with restrictive language within some of the specific industrial zone subsections. A highlight of the section was posted with and discussed at the 7-16-2020 PZC meeting. The Commission has provided guidance to staff and corporation counsel at several other meetings over the past year. (See attached minute excerpts)

CAPITOL REGION COUNCIL OF GOVERNMENTS FINDING:

Pending official comment.

INTERDEPARTMENTAL COMMENTS:

Fire Marshal, Engineering and Inland Wetlands have issued: No Comment

mgjusti

From: Luis Rivera <lr.rivera@comcast.net>
Sent: Monday, August 3, 2020 8:17 PM
To: mgjusti
Cc: jj.dispatch@comcast.net; Diana J. Bisson
Subject: Re: Proposed amendments verbiage questions and noise
Attachments: Opinion Letter to Berlin P&Z.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Maureen,

I will not be present this Thursday, August 6th, and would like the attached letter submitted for Thursday's public P & Z meeting. My document doesn't directly speak to the amendments but it speaks to the inappropriate actions performed by Climate Engineering and to bring awareness to any further amendment changes that may make matters worse here in our East Berlin neighborhood.

Thanks,
Luis Rivera

On 08/03/2020 9:31 AM Diana <jpbdja@aol.com> wrote:

Hi Maureen,

With the proposed amendments, I am confused with the strikeouts for "specifically excluding" the outside parking of trailers. Does this mean trailers have to be parked inside with the new proposals? Please give more specifics on what this means.

"Outside parking of trailers shall only be permitted pursuant to such conditions as the commission may impose." Does this mean that the P&Z commission has to approve outside parking of trailers? Please give more specifics on what this means.

What do we need to submit by noon on Wednesday? If we speak on Thursday night, can those comments be added to the town and commissioners' files (before the 8/6/20 meeting) if we submit them by noon on Wednesday?

What is the required setback area measurements for a PI zone?

I am going to send some noise complaints for the record for the Climate Engineering town file. Sorry, I'm behind on sending them.

Thanks,
Diana Bisson

The following letter is a Letter of Opinion in regard to Industrial Zoning regulations and amendments and how Climate Engineering has affected our residential neighborhood. I am submitting this letter due to my public absence for the scheduled August 6th, 2020 Planning & Zoning meeting.

Let me provide a brief history. I first contacted Jim Horbal, Deputy Director of Public Works, approximately 4.5 years ago via Email on February 11, 2016! He replied and forwarded my Email to Chris Edge, Economic Development Director, and I was visited by Chris at my residence on Monday, February 24, 2016. Our complaint was regarding sound and vibrations we were experiencing late evening and into the morning. Initially, we thought it was Edro Corporation, but after discussion with Ed Kirejczyk (Edro), he indicated they are not a 3rd shift company. Our attention then turned towards Climate Engineering as we noticed the growing number of trailers in their yard and trucks constantly going in and out of their facility. This made a lot of sense since Climate Engineering removed all their trees (buffer) on their property and adjacent to Commerce Street in late 2015. Basically, with our homes about 600 feet away Climate Engineering, the removal of the buffer (trees) is one of the major causes of the effects (noise & sound) we've experienced to this present day! Also, appearance-wise, it looks terrible... all you see is parked trailers!

Unfortunately, after 4.5 years, we've had a high number of complaints and police reports (over 20 filed) against Climate Engineering for mostly excessive noise late evening/early morning hours. They have been most troublesome and have continued to add to the noise level by letting their trucks idle late at night and have refrigeration units cycling on/off all evening, as examples. We've had a number of zoning meeting issues involving Climate Engineering, denial of variances (2016 & 2018), compliance issues, unfilled landscaping requirements, and cease & desist orders! Over the years, they have shown disregard to the Berlin community and to our neighborhood... very sad!

My concern has to do with allowing Climate Engineering to operate equipment and machinery late night and into the morning. Why should these amendments be made to help Climate Engineering? Again, a lot of these issues dates back to the landscaping buffer I've mentioned as it **was supposed to remain as a condition of the conditional use variance that was granted in 2009!** What happened? The fact they were able to remove the buffer should raise a Red flag with the Planning & Zoning Commission. We seriously need to take a second look at any amendment changes that would benefit Climate Engineering and their East Berlin Operations, especially 3rd shift hours (10 PM – 6 AM). If you're going to make some amendment changes, you may want to make go back and re-visit Climate Engineering issue and have them install the proper landscaping buffer along with measurable items with dates.

Sincerely,

Luis Rivera
172 Redwood Lane, East Berlin, CT
Email: LR.Rivera717@gmail.com

Public hearing comments by Diana Bisson about proposed amendments to the Berlin Zoning Regulations regarding outdoor storage in industrial zones

August 6, 2020 P&Z meeting

**Diana Bisson
167 Redwood Lane, East Berlin, CT 06023**

I am a resident that lives near a planned industry zone. When I use the pronoun "we" in my speech, I am referring to me and my residential neighbors who live next to a PI Zone. I have concerns with these proposed storage amendments resulting in noise problems, view issues, and conflicts of interest. We received the proposed verbiage less than 3 weeks ago (the day after the July 16th P&Z meeting), so I cannot say that there is conflicting verbiage in the current Town of Berlin zoning regulations that need clarifying and editing as I did not have enough time to cross-reference zoning sections. The proposed verbiage is difficult to understand and especially more so with the strikeouts. Also, specifically, it is hard to understand how these potential amendments can affect, and add to, unresolved and existing storage, noise, and view problems with companies who have existing storage restrictions and conditional uses in place.

For over 4 years, my residential neighbors and I have been having problems with Climate Engineering a.k.a. Transicold/Carrier at 86 Commerce Street, East Berlin, CT with negative storage, view, and noise issues. As you may recall, in late 2015, they illegally removed a required buffer of several mature trees, after receiving an approval for a 2009 conditional use variance requiring them to keep the buffer. There is no buffer to this day.

Climate proposed a site amendment to allow them to lease refrigeration trailers 24/7/365. This was denied by the P&Z Commission in May 2019.

They have illegally stored and operated on the unapproved, cleared buffer lot. They used that area to park trucks from 2016 until February 2019, before their May 2019 P&Z meeting. They used that same lot as recently as 8/4/20 (I'll discuss later). In April 2020 they used that lot to receive and store big metal squares; so big that a front loader was used to unload them off the truck. I supplied Maureen Giusti a video and pictures as proof that they continue to violate their 2009 conditional use variance and after cease and desist orders were served. The metal squares were still there in June 2020. So they still use and store items where they legally shouldn't.

Along with the cleared buffer, they illegally use another building on their site (30 Commerce Street) for storage. I have previously supplied pictures to the town and commission showing that and I can supply them again upon your request. Both this cleared buffer land and building were purchased by Climate in 2015. Climate Engineering was served cease and desist orders pertaining to use of this building, due to use violations, with legal action taken.

Also, per the variance, they are required to have a maximum number of 20 stored items on the lot. I have previously presented pictures as evidence of them exceeding this storage at previous P&Z and ZBA meetings over the years and they are part of the town records regarding Climate Engineering. I can supply them again upon your request.

They continue to violate Regulations of Connecticut State Agencies (RCSA) 22a-174-18 with the idling of vehicles for more than 3 minutes and often run motors for several hours at a time, despite the day and time. They have stored running refrigeration units and some motors overnight. I have previously supplied police reports pertaining to noise as evidence at previous P&Z and ZBA meetings over the years and they are on the town record as well. I can supply them again upon your request. It just happened on Sunday, 7/12/20 at 7:46 pm, with a truck running for 1.5 hours and I have a video as proof that it was coming from Climate. Again on Sunday 7/26/20 with a truck kicking on every hour for 2 hours and running 10-15 minutes at a time. I first heard it at 6:25 pm since I got home at 6 pm and the last cycle ended at 8:25 pm. The motor was so loud, the noise penetrated the walls of my house. The overnight noise just happened on 8/4/20. I got home at 5:25 pm and instantly heard the noise. By 7:25 pm they were constantly running for 2 hours, and probably longer than that, and I went over to confirm and saw 2-3 trailers with refrigeration units with at least one (or possibly more) running. After 3.5 hours, I called the police (case #2020-12574) at 9:00 pm to confirm and get the noise complaint on record as we were advised to do years ago by the Town of Berlin Planning and Zoning Department. They were parked and running on the illegally cleared buffer by Commerce Street and it was confirmed by the police. They were still running at 11:30 pm and continued running into the morning. Please see the pictures at the end of my comments for the 8/4/20 incident. These are just a few recent examples of noise. If I am able to, I would like to play a 50 second video at the end of my speech (at the 8/6/20 meeting) to demonstrate the noise from 8/4/20.

This proposed verbiage can potentially allow them to make **more** noise 24/7/365 as they access those additionally stored noise-making items, engines, motors, and refrigeration units that run for long periods of time. Allowing more future

storage will result in them moving more stuff around and cause more noise. This noise has already negatively and tremendously affected us over the last 4 years and has not been resolved.

I noticed that since the July 16th P&Z meeting, the 4-5 day storage limit was removed from the proposed verbiage and I'm assuming that it would be difficult for the Town of Berlin Planning and Zoning Department to keep track of what is being stored and the time length. I feel this should be kept in place to make the businesses accountable for storage time limits, otherwise the storageable item can be kept there indefinitely and items being added to existing storage can build up to a mess.

Also removed from the proposed verbiage was verbiage pertaining to trucks and trailers cannot contain goods. This isn't good since a running refrigeration unit would potentially be allowed and there would be noise since the trailer can hold goods.

Also removed from the proposed verbiage was opaque screening. Opaque screening would block our view of Climate every day of the year.

Chairperson Veley has previously stated at the 3/5/20 meeting that it is important to not allow outside storage to become a blight issue, and I agree. This can give them carte blanche to store more, even with the newly added verbiage of "shall only be permitted pursuant to such conditions as the commission may impose" thereby increasing the view of blight from my residential property along with the external obsolescence. Again, there is no buffer except two lines of trees, which lose their leaves, so I can see their property from my backyard all year round. The setback from the road is mentioned in the Berlin Zoning Regulations. I don't know the required dimensions of a setback, but the western portion of their land is the buffer that was illegally removed per their 2009 conditional use variance and may be included as part of the setback.

My questions with these proposed amendments are:

Would this allow them to store more trailers with attached engines, motors, and refrigeration units that can be run and cause more noise 24/7/365?

What is considered machinery and does it include parts that make noise that can travel to our houses and penetrate our house walls 24/7/365?

Is there going to be noise blockage language added to these proposed amendments to protect residential neighbors from sound of potential additional storage 24/7/365?

Screening was briefly mentioned by Maureen Giusti at the 7/16/20 P&Z meeting. As it stands we only have 2 rows of non-evergreen trees blocking our view of Climate. We have been requesting for years to have a buffer back. I have previously suggested a wall with evergreen trees to soften the look. What can the screening potentially be? Will it be high enough to block the view from the second floor of my house?

What are the specifics on these proposed amendments?

Are there going to be specific size and/or weight limit regulations for trailers, trucks and other storage items that can be stored in an industrial area?

Section VII, G, 3 of Berlin Zoning Regulations only permits storage on the sides and rear of the building and cannot extend into the setback from the street line or into required side yards adjacent to any non-industrial zone. But it doesn't list a specific amount of stored items. At the time of the submission of these comments to Maureen Giusti on 8/5/20, I did not hear back from her on the required dimensions of a setback for PI. Will this setback include the already illegally cleared buffer for Climate Engineering on the western portion of Climate's site? Are there going to be specific quantities detailed in the verbiage?

Who is going to monitor the storage at these industrial areas to see if the storage is meeting the regulations and per the conditions the commission imposed?

In summary:

It's easy for some people to want, recommend, and support these proposed amendments to make their job easier or help their business, for whatever reasons, but please keep in mind that these proposed amendments can affect the residential neighbors who live near planned and general industry zones.

At the 7/16/20 P&Z meeting, it was proposed that "No tractor trailer or truck loaded with merchandise, supplies and/or materials shall be parked in a lot for a period exceeding five consecutive days in one calendar month." and that was removed after the 7/16/20 P&Z meeting. Now that potentially allows them to store indefinitely. It also allows them to store trailers with goods inside them resulting in running refrigeration units. That doesn't benefit residential neighbors due to potential noise. Items stored inside trucks and trailers for indefinite amounts of time can cause rodent infestations with them building nests inside the trucks or trailers. Please reverse that, to not allow storage inside trailers and trucks, even though the stored goods may not be seen.

With these proposed amendments, my concerns are these poor outdoor views will increase by allowing them the opportunity to store more on the property and probably will do so without permission from the commission first. We have already experienced external obsolescence and poor views of trailers and trucks, and we certainly don't want blight. Sitting metal storage items can rust and dilapidate.

With these proposed amendments, my concerns are that storage can turn out of control without restrictions, undefined quantities of items stored, and without monitoring. Especially for Climate Engineering who tried to get a site amendment approved where they were seeking more use and storage on their site. Section VII, G, 3 of Berlin Zoning Regulations only permits storage on the sides and rear of the building and cannot extend into the setback from the street line or into required side yards adjacent to any non-industrial zone.

With these proposed amendments, my concerns are potentially allowing them to make **more** noise 24/7/365 as they access those additionally stored noise-making items, engines, motors, and refrigeration units that they run for long periods of time. Allowing more future storage will result in them moving more stuff around and cause more noise. This noise has already affected us tremendously over the last 4 years and has not stopped and has not been resolved. Once the noise from a motor starts, we don't know how long it will last for as it can be a few minutes or several hours. For me personally, the noise issues are bigger than the view issues. That is how affected I am by the noise.

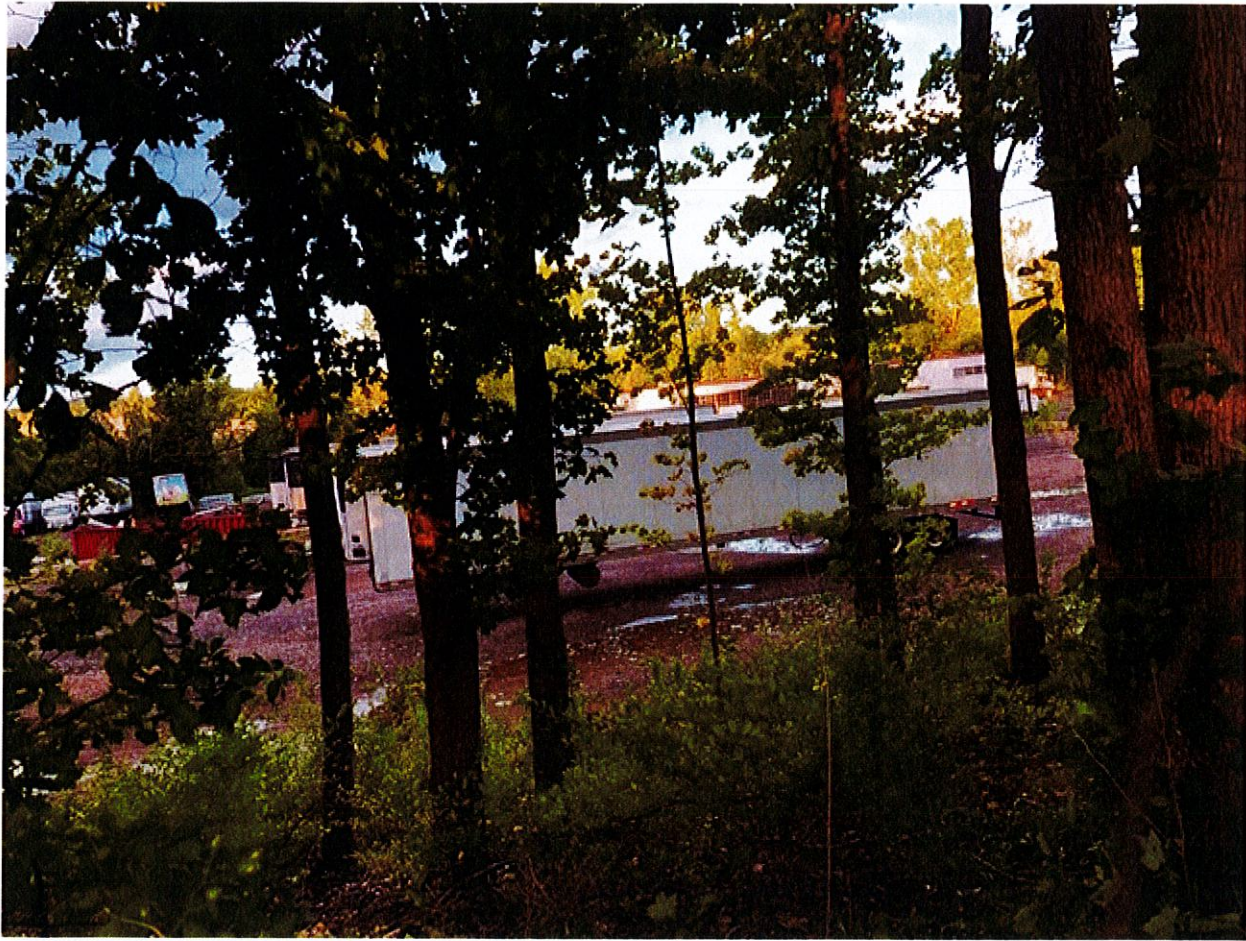
Another concern is a conflict of interest pertaining to businesses with use conditions and restrictions currently set in place. My main concern is with Climate Engineering. These proposals can potentially help Climate's legal case against the Town of Berlin to allow them to do what they were illegally doing in the first place. It can also potentially negate the cease and desist orders, and legal action, that the Town of Berlin has worked hard for to uphold the required and legal storage uses. A business like Climate Engineering was given an inch with the 2009 variance, but they took a mile since then and haven't followed the rules with their illegal use and storage; even after being served cease and desist orders and legal action. I highly doubt they'll seek permission with the commission first even with the verbiage "permitted pursuant to such conditions as the commission may impose". It seems like these proposed amendments can potentially reward them by doing what they want and were illegally doing, verses what they are currently required to do and still haven't adhered to. Why reward them with these proposed amendments? I understand that it is difficult for the Town of Berlin Planning and Zoning Department and Attorney Coppola to fight legal cases, but they have a strong case against Climate. Climate should be grandfathered with their current use and storage restrictions along with the requirement to replace the required buffer in addition to erecting opaque screening. They should be held accountable and cure their past violations and not be acquitted due to how these proposed amendments may help them. We, the residential neighbors of Climate, have paid for their misdeeds.

PLEASE understand how these proposed amendments can affect the residential neighbors since we live next to the PI zone/businesses and we have to see and hear it directly 24/7/365. It has been difficult for us. We want quiet enjoyment of our properties. I grew up in Berlin and was excited to build my house in East Berlin 19 years ago. I love the town and my house was always intended to be my forever home.

Thank you for taking the time to listen to me and letting me speak about how these proposed amendments can potentially affect the residential neighbors and especially with our ongoing and unresolved storage and use problems with an industrial neighbor. Thank you for serving on the Commission.

Sincerely,

Diana Bisson



8/4/20 - Two to three trailers parked on the illegally cleared buffer. The black refrigeration units are to the left at the end of the trailer. The police confirmed the noise.



8/4/20 - Two to three trailers parked on the illegally cleared buffer. The black refrigeration units are to the left at the end of the trailer. The police confirmed the noise.