

## Text Amendment

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**Applicant:** Timothy Sullivan, Esq., Wisniowski & Sullivan, LLC.  
**Text Amendment** Amendment to Berlin Zoning Regulations pertaining to gasoline filling stations:  
**Add NEW Section VI.G.3.ee. Commercial Zones. Berlin Turnpike -1 (BT-1). Special Permit Uses. Gasoline Filling Stations.**

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### PROPOSAL

Proposed Amendment to the Berlin Zoning Regulations of Timothy Sullivan, Esq. for new section VI.G.3.ee – Gasoline Filling Stations

#### Background / History of gasoline Filling Station Regulations

*Definition BZR §II. Gasoline filling station: Any building, place or location primarily engaged in the sale of gasoline and motor oil and which may sell other merchandise or preform minor repair work.*

Gasoline filling stations are subject to Special Permit & site plan approval (for new or modifications to an existing site) from the Commission and Location Approval by the ZBA under the requirements of Special Regulations §XI.R in the PS-A, GC, BT-1 zones and under additional specific regulations for the CCD-1 and CCD-2 Zones as listed in §VI.I.3.h & i. The Zoning Board of Appeals is required by Connecticut General Statute to authorize the location for gasoline filling stations (CGS §14-321 & BZR XI.R). Location approval, as mandated by the Statutes, must be obtained prior to a zoning signature on state license applications.

The Commission amended the Regulations Section XI.R Automotive Uses in 2019 generally for housekeeping and to streamline administration of the auto use approval process and assist the public in understanding their applicability. It was noted that the 2019 changes would provide a manageable base for further study for future amendments. Earlier Regulations, prior to 1994, The *Special Regulations* title had separate sections 11.51 *Gasoline filling stations* and 11.52 *Repair and service garages*. The 1994 comprehensive renumbering and reformatting of the Berlin Zoning Regulations incorporated Repair and service garages into one, *section, R. Gasoline filling stations*. Gasoline filling station regulations for the CCD-2 Zone, BZR§VI.I.3.i. specific to gasoline filling stations as part of a shopping center were added in 2008 which ultimately allowed the establishment of the gas station at the Stop & Shop site.

#### Staff Comments:

The applicant has provided a narrative supporting and explaining the reasoning of the text amendment. It was further indicated to staff that the proposed language relied heavily on the text amendment to allow gasoline filling stations associated with a larger retail component in the CCD-2 zone as added to the Regulations in 2008.

In review of the provisions of the proposed regulation and as it compares to the existing regulations, including Section XI.R. that currently applies to gasoline filling stations in the BT-1 Zone, the following were specifically noted:

1. **Proposed ee.** general provision: "...served by a principal building containing a principal tenant occupying not less than 5,000 square feet designed and permitted to monitor the facility, service customers and sell retail merchandise may be allowed. ..."  
**Existing XI.R.12.c.** "As an accessory use the limited sale of retail, convenience items shall be permitted at a gasoline filling station, subject to parking required and the following... iii. At filling stations which do not offer repair services, as accessory use, a maximum of 2,000 square feet of space may be utilized for the display of retail merchandise within the station..."
2. Elimination of the provision requiring a 1500-foot radius from any lot with another gasoline station use.  
Staff is in the process of preparing mapping showing existing gas stations along the Berlin Turnpike corridor and identifying the existing regulation buffer of 1500 feet from each site. (attached if prepared prior to distribution)
3. ee.iii. is consistent with fuel pumps required to be 25 feet from the street line; however accessory structure canopies are usually proposed over such pumps the proposed language does not allow for a canopy and reduces the zone setback to 45 feet for accessory structures. Existing Bulk table in BT-1 zone setbacks are the same for principal and accessory structures: Front yard: 50 feet; Side yard: 25 ft \*(with exceptions); Rear yard: 50 ft.  
The applicant should confirm if the last line of this section, referring to CCD-2 setbacks is correct or was intended to refer to the BT-1 zone bulk table. If intentional, the applicant should explain.
4. xii. Construction and curb cuts along the Berlin Turnpike are subject to State review. Staff recommends language be considered to reference State requirements for example: "...or as further restricted by the State along the State highway."
5. xiii. The current regulation indicates that retail uses in excess of 500 s.f. supply parking at the parking table requirement of 1:250 sf GFA; proposed language provides for the applicant to demonstrate sufficient parking to the Commission.

There is one pending application for a gasoline filling station location as part of the BT 2008 LLC Mixed Use BT-1 Zone development with proposed lot line revisions to comply with the 1500-foot separation. The associated retail building for that application is 4320 s.f. (1000 sf drive thru, 3320 sf retail) A pending question before the Commission regarding that project is if the commercial sales component would be considered another primary use as opposed to being subject to the current regulation restriction of 2000 s.f. of accessory use retail display (BZR §XI.R.12.c.). Any impact of this amendment on that application remains under review.

### **Interdepartmental/ Interagency Comments**

Board of Police Commissioners, Police Chief, Fire Marshal, Building Official, Inland Wetlands, Berlin Water Control, Engineering and the Health District all replied “No Comment” on the proposed text amendment.

Capitol Region Council of Governments – CRCOG provided comments dated March 12, 2021. The comments indicated “... no apparent conflict with regional plans and policies or the concerns of neighboring towns.” The letter is distributed with meeting materials.

### **Consistency with the 2013 Plan of Conservation and Development**

The Commission should consider consistency with the POPCD in adopting amendments to the Regulations. In addition to the considerations from the applicant’s narrative

Goal #3 in the POCD states: “The Town shall encourage economic development in those areas best suited to sustain growth given current environmental, infrastructure and transportation conditions.” Strategies to achieve that goal include: #2 - “Utilize zoning to direct land uses towards areas appropriate for development”, and #5 - “continue to use and update standards that can be used as guidance or requirements for design”.

The 2013 POCD specifically identifies the Berlin Turnpike as an economic generator and identifies “the future of the Berlin Turnpike Corridor is for strategic intensive development within key areas to establish this area as a contemporary growth corridor with an appropriate mix of uses.”

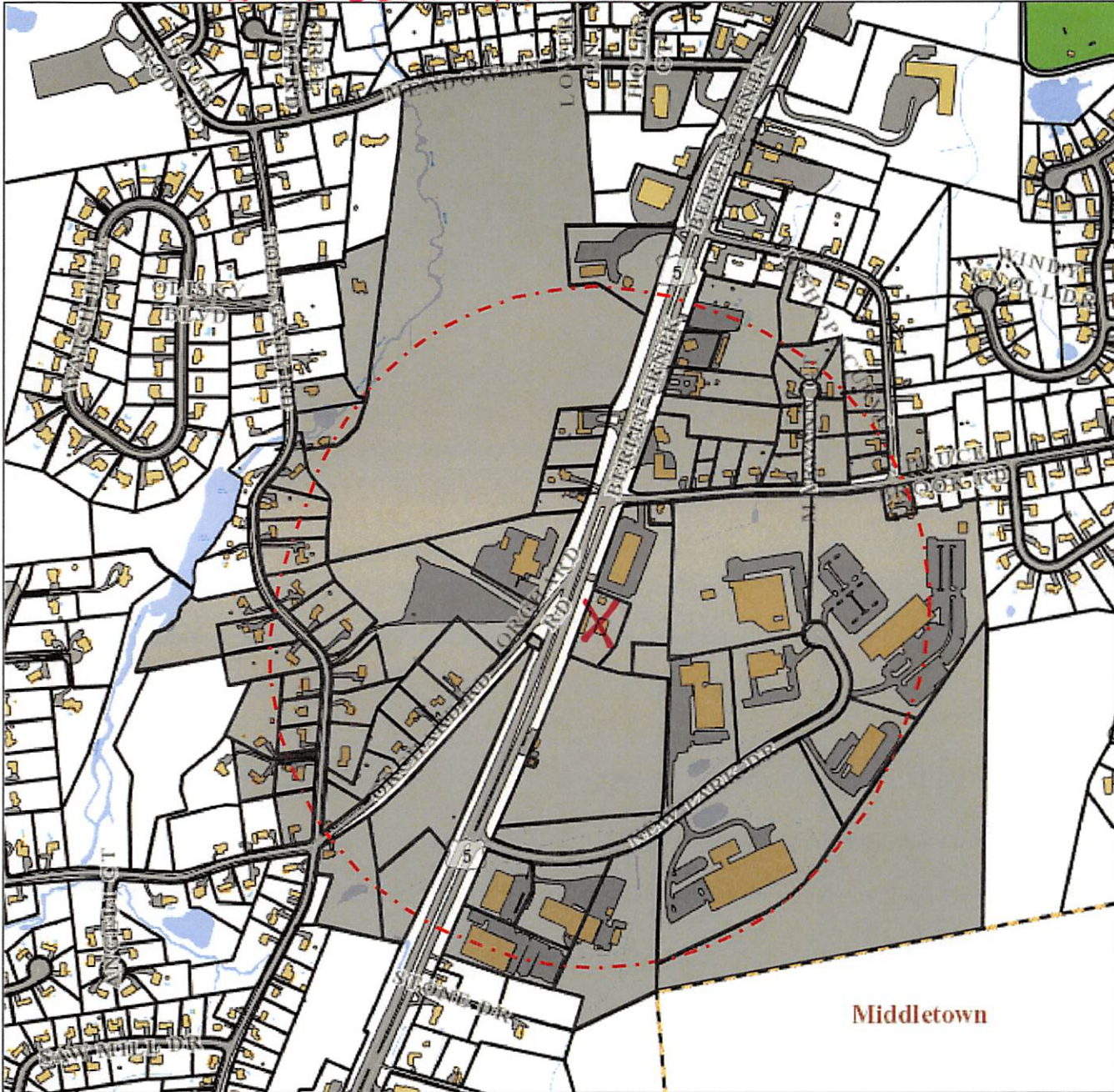
# Town of Berlin

Geographic Information System (GIS)



Date Printed: 3/17/2021

2005 Berlin Turnpike



## MAP DISCLAIMER - NOTICE OF LIABILITY

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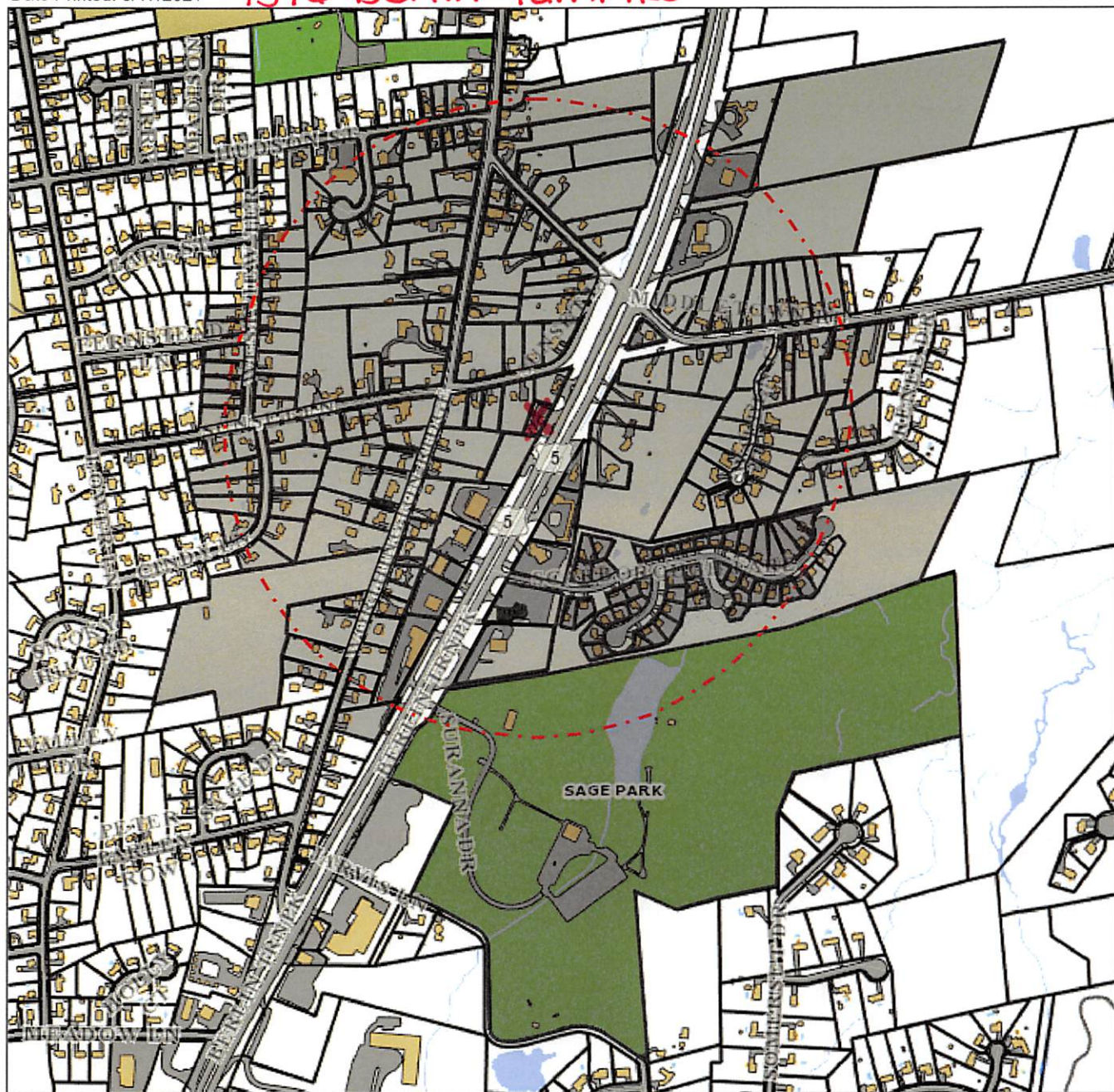
# Town of Berlin

Geographic Information System (GIS)



Date Printed: 3/17/2021

1376 Berlin Turnpike



## MAP DISCLAIMER - NOTICE OF LIABILITY

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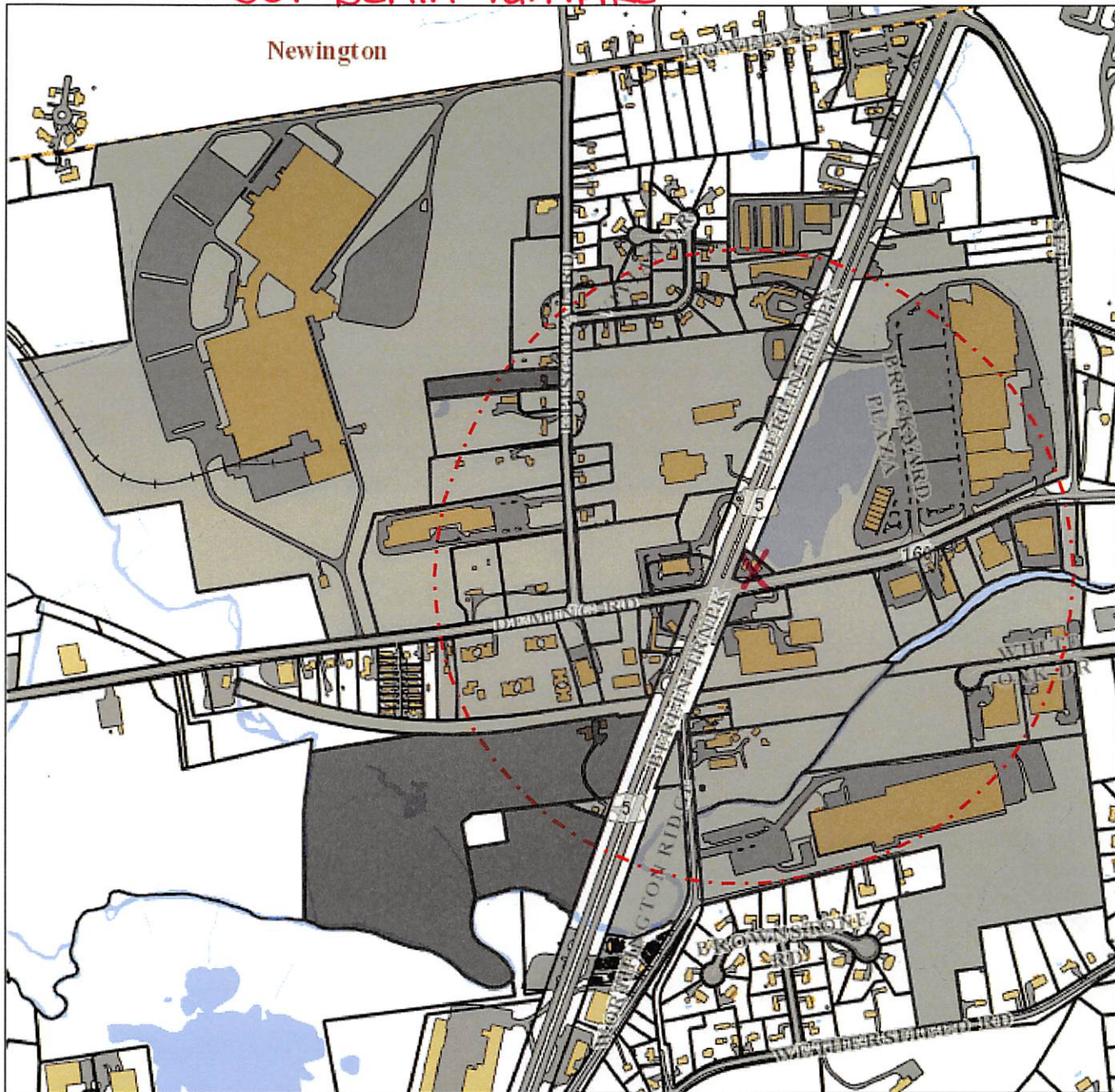
# Town of Berlin

Geographic Information System (GIS)



Date Printed: 3/17/2021

301 Berlin Turnpike



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# Town of Berlin

Geographic Information System (GIS)



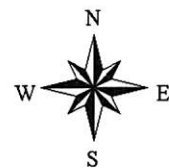
Date Printed: 3/17/2021

109 Berlin Turnpike



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# Town of Berlin

Geographic Information System (GIS)

Approx. BT 2008 Pending Application



Date Printed: 3/17/2021

0 Berlin Turnpike



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**Wisniowski & Sullivan, LLC**  
**Attorneys at Law**

**Wanda L. Wisniowski**  
Also admitted in New York

**Timothy Sullivan**

*Please respond to our Southington office*

February 4, 2021

Berlin Planning & Zoning Commission  
c/o Maureen Giusti  
240 Kensington Road  
Berlin, CT 06037

**RE: Proposed Text Amendment to the Berlin Zoning Regulations  
New Section VI G.3.ee**

Dear Mrs. Giusti:

As we discussed, enclosed please find a proposed text amendment together with a check in the amount of Four Hundred Sixty and 00/100 (\$460.00) Dollars. Also enclosed is a narrative supporting the proposed Section VI G.3.ee.

Sincerely

Timothy Sullivan

ETS/AM  
Enc.

**Town of Berlin  
Received**

**FEB 04 2021**

**Planning & Zoning Department  
Berlin, Connecticut**

*\$460 Application Fee Paid*

## Proposed Amendment to Section VI G of the Berlin Zoning Regulations

### New Section VI G.3. ee

**ee** Gasoline Filling Stations\*. In the BT-1 zone only, gasoline filling stations, excluding any repairs, serviced by a principal building containing a principal tenant occupying not less than 5,000 square feet designed and permitted to monitor the facility, service customers and sell retail merchandise may be allowed. Any Special Permit shall be subject to site plan approval by the Planning and Zoning Commission in accordance with Section XII and XIII. The requirements of Section XI R shall not apply to facilities approved pursuant to this provision but shall be subject to the following conditions:

- i. The location of gasoline filling stations shall be subject to receipt of a certificate of approval from the Zoning Board of Appeals.
- ii. No outside storage of any motor vehicle shall be permitted.
- iii. Fuel pumps shall be set back from the street line at least 25 feet. All other buildings and structures, except underground storage tanks, shall be set back at least 45 feet from the street line, ten feet from each side line and 20 feet from the rear lot line. If the gasoline filling station abuts a residential zone, the greater setbacks required by the CCD-2 zone shall apply.
- iv. Storage tanks for gasoline or other motor vehicle fuels shall be located underground in compliance with pertinent local and state codes and regulations.
- v. There shall be no outdoor display of merchandise, except that motor oil and other fluids for motor vehicles may be displayed on racks designed therefore immediately adjacent to the service building.
- vi. There shall be no dumping of waste materials, such as grease or oil.
- vii. There shall be no residence or sleeping quarters maintained in any gasoline filling station.
- viii. Sign provisions of Section IX.A shall apply except that small (not visible from the street) credit card, direction, telephone or similar public convenience signs shall not count towards the permitted sign area.

**Town of Berlin  
Received**

**FEB 04 2021**

**Planning & Zoning Department  
Berlin, Connecticut**



- ix. The Commission may require a suitable buffer to screen from adjacent properties. The buffer may include a 10-foot landscaping area and/or a fence approved by the Planning and Zoning Commission. Landscaping plans for the overall site shall be submitted as part of the Special Permit/Site Plan applications and shall be a critical part in evaluating how well the use shall fit in with the surrounding areas.
- x. The architectural style and design of the gasoline filling station (including but not limited to the canopy and service building) shall be approved by the Planning and Zoning Commission and shall be compatible with the architectural style and design of the primary buildings and design of the shopping center of which it is to be a part.
- xi. The facility shall not be designed to service motor vehicle with an overall wheel base greater than thirty (30) feet in length. The Planning and Zoning Commission may require design changes, signage or other appropriate measures be utilized to prevent the use of the facility by larger vehicles.
- xii. There shall be no more than one driveway per every 50 feet of parcel length. Such driveways shall not be more than 35 feet wide, and not less than 20 feet wide at the curb line; shall be no closer than 15 feet at the curb line and shall be at least 20 feet from any intersection of public streets. All driveways, parking or standing areas shall be permanently improved with a paved surface.
- xiii. The applicant shall demonstrate that enough parking has been provided for in the special permit and site plan applications.
- xiv. The applicant shall demonstrate that the nature and intensity of the operations involved in or conducted in connection with the gasoline filling station shall be such that it will be in harmony with the appropriate and orderly development of the area including all adjacent zoning districts in which it is located.
- xv. Receptacles appropriate for debris and trash shall be located and maintained in the area of the gasoline filling station at locations approved by the Commission. The Commission may require screening of any receptacles through the use of appropriate landscaping or fencing.

**Town of Berlin  
Received**

**FEB 04 2021**

**Planning & Zoning Department  
Berlin, Connecticut**



### NARRATIVE SUPPORTING NEW SECTION VI G.3.ee

The existing limits on the placement and square footage of gasoline stations with convenience stores are an impairment to attracting investment in properties located on a state highway with a right-of-way ranging to over 150 feet with average highway speeds in excess of 60 miles per hour. The proposed convenience retail square footage provides for appropriate scale for this corridor and provides opportunity to design sites with consideration given to the Berlin Turnpike Design Guidelines that were adopted by the Commission in 2009. That study notes that this corridor is a regional shopping destination, and that Berlin is intent on attracting development that respects, reflects and enhances a positive image.

The Objectives portion of these guidelines states that there should be an effort to “create an aesthetically pleasing appearance along the Berlin Turnpike to enhance this area as a portion of a growing regional commercial corridor.” The Fundamental Design Principles encourages the development of “positive attributes of the corridor through architectural style, materials, colors and site amenities.”

The standards recommended for in the Buildings section of these guidelines includes various items that can be more easily accomplished in with structures of larger scale which can showcase the various elements that are encouraged. Restricting building square footage does not encourage the fulfillment of the Guidelines as it encourages and results in a minimalist approach to investing in and development of these destinations along this essential corridor.

It appears that it has been at least 30 years since these regulations were adopted, and there has significant changes in this industry since then. We would first like to offer that the 1500-foot separation distance does not exist in any neighboring communities, and it is unclear what purpose this restriction serves on the Route 5/15 corridor where traffic volumes remain the highest in the community, and where the demand and need for larger convenience retail would also be the highest.

The Commission is aware that Section 8-3b of the Connecticut General Statutes requires that the Commission consider the Plan of Conservation and Development (POCD) in its consideration of any amendments to the regulations. A review of the current POCD encourages discretion in the Commission to accommodate economic growth enterprises and facilities to enhance development potential. The POCD specifically recognizes that retail development is spreading south on the Berlin Turnpike and that the Town has an enhanced opportunity to capture new retail development, particularly near the Deming Road intersection. The POCD also recognizes the importance of the exterior finish to buildings.

The convenience retail industry has evolved considerably since 1991. The regulations only consider convenience stores in their early designs. In their original format, convenience stores ranged up to approximately 2,000 square feet and carried a limited supply of beverages, convenience food items, tobacco products and snack items. These stores were known in the industry as kiosks ranging from 800 square feet to mini-convenience stores of up to 1,200 square feet. The original stores expanded rapidly with floor plans up to and exceeding 2500 square feet. Preferred convenience store design has again increased as have the choices available for consumers. The larger format stores include more grocery items including prepared foods, bakery items, many more choices for beverages, fast food, and other items. Many stores will have more than 500 sku's (stock keeping units) available for consumers, making the need for the additional square footage. It is therefore requested that the Commission permit the establishment of gas filling stations with convenience stores of not less than 5,000 square feet in the BT-1 zone with no distance restriction on their placement.



February 19, 2021  
Updated March 3, 2021 (Engineering)

**TOWN OF BERLIN  
PLANNING & ZONING DEPARTMENT - STAFF COMMENTS**

**APPLICATION:** Proposed Amendment to Zoning Regulations  
New Section VI.G.3.ee – Gasoline Filling Stations  
**APPLICANT:** Timothy Sullivan, Esq.  
**AGENDA DATE:** March 18, 2021

*To the Applicant:*

- *These are the comments received to date, additional comments may be forthcoming. Please submit any written response to Maureen Giusti, Acting Town Planner/Zoning Enforcement Officer at [mgiusti@town.berlin.ct.us](mailto:mgiusti@town.berlin.ct.us) or revised plans directly to the Planning & Zoning Department in Room 121. We will forward your comments or distribute materials to the relevant department.*
- 

Board of Police Commissioners

- No comment

Police Chief

- No comment

Fire Marshal

- No comment

Building Official

- No comment

Inland Wetlands

- No comment

Health District

- No comment

Berlin Water Control

- No comment

Engineering

- No comment

Emailed to T. Sullivan, Esq. – March 3, 2021

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Updated March 3, 2021 (Engineering)

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Engineering

- No comment

Emailed to T. Sullivan, Esq. – March 3, 2021



March 12, 2021

**TO:** BERLIN PLANNING AND ZONING COMMISSION

**REPORT ON ZONING REFERRAL Z-2021-8: Proposed zoning amendment pertaining to gas stations with convenience stores, with regards to placement and square footage, in the Berlin Turnpike (BT-1) Commerical Zone.**

**COMMISSIONERS:** Receipt is acknowledged of the above-mentioned referral. Notice of this proposal was transmitted to the Policy and Planning Division of the Capitol Region Council of Governments under the provisions of Section 8-3b of the Connecticut General Statutes, as amended.

**COMMENT:** The staff of the Regional Planning Commission of the Capitol Region Council of Governments has reviewed this zoning referral and finds no apparent conflict with regional plans and policies or the concerns of neighboring towns.

The public hearing date has been scheduled for 3/18/2021.

In accordance with our procedures this letter will constitute final CRCOG action on this referral. Questions concerning this referral should be directed to Caitlin Palmer.

**DISTRIBUTION:** Planner: Newington, Rocky Hill, Southington, New Britain, Cromwell, Middletown, Meriden, River COG, South Central COG

Respectfully submitted,

Jennifer Bartiss-Earley, Chairman  
Regional Planning Commission

Brendan Malone, Vice Chairman  
Regional Planning Commission



Caitlin Palmer  
Senior Community Development Planner