

MEMORANDUM OF STAFF COMMENTS

TO: Zoning Board of Appeals
FROM: Adam Levitus, ZEO
DATE: March 17, 2021
RE: #2021-03 Motor Vehicle Use Approval – Gasoline Filling Station
APPLICANT: BT 2008 LLC (Peter D’Addeo, Managing Member of D’Addeo Family Limited Liability Company, Member of BT 2008 LLC)
ADDRESS: 0 Berlin Turnpike
Map 10-2 Block 83 Lots 12-7333, 12-7334, 13A, 13C-7509, 13C-7510
ZONE: BT-1 (with pending application to the Planning and Zoning Commission for a change to BTD)

Proposal and Background

BT 2008 LLC (Peter D’Addeo, Managing Member of D’Addeo Family Limited Liability Company, Member of BT 2008 LLC) is requesting a motor vehicle use location approval for a gasoline filling station per Berlin Zoning Regulation XI.R. The properties are owned by BT 2008 LLC and the gasoline filling station is being proposed as a component of a proposed mixed-use development.

Staff Comments

3/17/21 Update (Public Hearing kept open at 2/23/21 Meeting):

This project is still undergoing PZC review. Some updated plans relevant to the gas station approval have been received and have been posted to the website/distributed to ZBA members. However, the project is still being reviewed holistically as part of the PZC review process.

Staff will provide an update to ZBA members and the website before the ZBA 3/23/21 meeting should a decision be reached at the 3/18/21 PZC meeting.

2/18/21 Update (Public Hearing kept open at 1/26/21 Meeting):

Third-party engineering and planning consultant reports (procured as part of the PZC reviews for this project), an updated aerial rendering, Town of Berlin Engineering Department comments, and three updated site plan sheets (SK 27.1-3) were received by staff and distributed to PZC members on 2/17/21. Copies of those documents have been posted to the website and have been provided to ZBA members in their document packages for the 2/23/21 ZBA meeting.

Note: Due to weather-related scheduling, the next PZC meeting for which comments / information might be heard for this project will not be until 2/25/21.

As of the writing of this memorandum, Staff are still in the process of reviewing the consultant reports and other documents. Based on a preliminary, cursory review of the consultant reports, updated plans, etc, there are items that may impact the overall site configuration and/or ZBA decision-making:

- There are outstanding discussions regarding the requirements surrounding retail convenience store/coffee shop uses (e.g., accessory vs. principal retail uses) and around parcel size/lot lines.
- Easements with the town have not yet been drafted per Town Engineer comments. These include areas at proposed lot line revisions that would impact the 1500ft separation
- There are outstanding discussions regarding the location of some of the vehicular access, parking, and the required dumpster area is located outside of the proposed property line for this gas station
- A number of design-related elements appear to be outstanding per engineering consultant comments (e.g., Wetland review comments not yet incorporated, grading/stormwater plans yet finalized, questionable soil conditions beneath the gas station convenience store, etc.). These elements might be resolvable, but that resolution may impact the site plan.
- Again, these are some preliminary observations based on a cursory review. More observations/comments will likely arise and/or be resolved through the PZC review process.

Note:

The suitability of the location for a gas station under ZBA approval – as defined by the Berlin Zoning Regulations XI.R – is dependent on a number of factors. One such criteria is the commonly-cited 1500-foot required separation from another filling station. However, this is only one of many criteria. For example, the 1500-foot requirement is in the same list of sub-section criteria for gas stations as fuel pump setbacks of 25 feet and the retail merchandise 2000 sf maximum limitation. All such criteria should be reviewed and considered as part of a ZBA approval, not just the 1500-foot separation requirement.

Note:

Overall staff comments/recommendations from the 1/22/21 memorandum and 1/26/21 ZBA meeting discussion still generally remain the same at this time. The applicant should continue to navigate the PZC approval process and update documents as required based on those reviews. Those materials will continue to be shared with the ZBA to maximize the efficiency of the process, to help inform ZBA decision-making, and to help expedite communication of any ZBA concerns and/or decisions.

Original staff comments below from 1/22/21 – kept for continuity since application largely has not changed:

Note that site plan, special permit, and zone change applications for the proposed mixed-use development was separately submitted by the applicant to the Planning and Zoning commission for review. The approval of a gas station location by the ZBA would require that the site first be finalized (e.g., to confirm the 1500ft separation is met by checking the final, amended lot lines).

The Planning and Zoning Commission have not yet approved the unified master plan, uses, site elements and other elements in the site plan/special permit/zone change applications (including lot lines) as of the 1/21/2021 PZC meeting. Consultants have been retained by the town to assist in the review process, but the consultant reports and analyses are still being developed. The PZC is currently scheduled to continue the public hearing for this project at their 2/18/2021 meeting. At the request of the applicant, staff have compiled the application to be put before the ZBA, and the ZBA should determine how it wishes to proceed.

This project is comprised of 3 lots located along the west side of the Berlin Turnpike, just south of Deming Road. Most of the land in these lots is currently undeveloped, with the exception of a small building at the northeast corner of the 24.75 acre lot at 404 Berlin Turnpike.

The project is proposed to be a mixed-used development under the requirements of the BT-D zone (the zone was added in 2019 in order to promote mixed-use developments along the Turnpike). The project is intended to consist of commercial (convenience store, gas station, retail), residential (200 apartment units), and hotel uses.

As part of this project, the 3 lots are being developed under one assemblage/unified master site plan. The project is frequently known under the 404 Berlin Turnpike address (which coincides with the largest parcel); however, the proposed gas station is proposed for the southern 10-acre parcel (current address is 0 Berlin Turnpike).

The BT-D zone allows for any uses that would be permitted in the underlying zone (in this case, BT-1). The BT-1 zone permits gasoline filling stations as a special permit use subject to both PZC site plan and ZBA motor vehicle location approval.

Regarding motor vehicle use design criteria (enumerated in BZR XI.R.), the 11/3/20 memorandum from Alter & Pearson, LLC to the ZBA largely appears to coincide with the submitted site plans and the motor vehicle use location special regulations as required by BZR XI.R. This includes the 1500ft distance from the nearest gas station (Gulf at 301 Berlin Turnpike) and 500-foot distance from places of public assembly (e.g., churches, schools). Note that these items have not yet been fully reviewed (either as a standalone gas station or as part of the unified master plan), as the Planning and Zoning Commission consultant report regarding overall site locations, parking, etc. has not yet been received by staff.

However, initial staff reviews suggest several items should be clarified by the applicant via updated/additional documents, including:

- Memo item 10 suggests that dumpsters are shown on SP-3, but no such dumpsters were observed on that sheet.*
- Memo item 12.c.ii suggest that display of retail will not exceed the 2000sf maximum, however, floor plans of the c-store were not submitted with the application, and the general site plan lists the retail use as 3320sf.*

- *Updated plans should be submitted by the applicant that clarify/address the items above and any other issues resulting from the larger PZC review. After PZC approval has been obtained, the applicant should submit the approved site plans (including all final lot lines, building footprints, floor plans, etc.) to the ZBA for this approval.*

As of the time of this report, staff have not received DMV Retail Gasoline Dealer License application forms from the applicant. If the ZBA wishes to proceed with the review and should the ZBA approve this application, those documents will need to be submitted for staff review prior to staff signoff of the DMV application. All state-required licenses and approvals would need to be obtained by the owner/applicant/operator prior to opening the gasoline filling station for business.

Zoning Requirements:

§XI.R. Automotive Services

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.