

Berlin Planning and Zoning Commission

AGENDA

May 6, 2021 7:00 p.m.

The Town of Berlin, CT Planning and Zoning Commission will hold its regular meeting in-person and by remote video conference call on Thursday, May 6, 2021 at 7:00 p.m. open Public Hearings will be continued at this meeting. This meeting may be attended in person at Town Council Chambers, Berlin Town Hall, 240 Kensington Road, Berlin, CT or remotely by video or telephone as provided below.

Remote access to this meeting is available by Zoom video conference at the following link:

Join Zoom Meeting*

<https://town-berlin-ct-us.zoom.us/j/8140556035?pwd=YU0xb1J2Yyt4RDVLUkRibFpFTFRuQT09>

Meeting ID: 814 055 6035

Passcode: PZ100

Dial by your location*

+1 929 205 6099 US (New York)

Meeting ID: 814 055 6035

Passcode: 488321

*Data and toll charges may apply.

This agenda and all meeting materials related to the agenda items which have been distributed to the Board will be posted on the Town's website at: www.town.berlin.ct.us and will be available for viewing before, during and after the meeting as provided for by the Governor's Executive Orders. Members of the public are encouraged to submit materials relevant to the applications to the Planning and Zoning Department no later than 12:00 p.m. on Wednesday, May 5, 2021 for posting prior to, during, and after the meeting.

- I. Call to Order
- II. Approval of Minutes:
 - a. April 15, 2021
- III. Schedule of Public Hearing
 - a. Text Amendment to Berlin Zoning Regulations Section X. to allow a permit approval period to align with statutory site plan and subdivision timeline of a related development approval.
- IV. New Business
 - a. Special Event Application of Keystone Novelties Distributors LLC to erect a temporary tent for the sale of CT State Legal Sparkler Products at 522 Berlin Turnpike, property of 550-554 Berlin Turnpike Associates, LLC. in the BT-1 Zone.
 - b. Site Plan Amendment Application of 224 Berlin Turnpike, LLC for modification to front and rear parking areas and rear access drive aisle, at mixed use development site at 224-256 Berlin Turnpike in the BT-D (PS-B) Zone.

- c. Site Plan Application of Kev Kai Properties, LLC for a 10,000 sq. ft. office/warehouse building to be subdivided into 2-3 units for rent at 239 Christian Lane in the GI-2 Zone.

V. Public Hearings

- a. Proposed Amendment to the Berlin Zoning Regulations of Timothy Sullivan, Esq. for new section VI.G.3.ee – Gasoline Filling Stations (Opened 3/18/21, 4/15/21, continued to 5/6/2021)
- b. Proposed Amendment to the Berlin Zoning Regulations of Timothy Sullivan, Esq. to add New Section XI DD – Planned Residential Infill Development (opened 4/15/2021)

VI. Old Business

- a. Special Permit/Site Plan Applications of BT2008, LLC for a mixed-use development at 404 Berlin Turnpike (Map Lot Block: 10-2-83-12-7333) and (Map Lot Block 10-2-83-12-7334) and (Map Lot Block: 10-2-83-13A) and (Map Lot Block: 10-2-83-13C-7509) and (Map Lot Block: 10-2-83-13C-7510) (Public Hearings held 1/21/21, 2/25/21, 3/18/21, closed 4/15/21)
- b. Proposed Amendment to the Berlin Zoning Regulations of Timothy Sullivan, Esq. for new section VI.G.3.ee – Gasoline Filling Stations
- c. Proposed Amendment to the Berlin Zoning Regulations of Timothy Sullivan, Esq. to add New Section XI DD – Planned Residential Infill Development

VII. Commission Business

- a. Discussion of POCD 2023
- b. Correspondence and Matters of Interest
 - i. Economic Development Director Correspondence

VIII. Adjournment

Berlin Planning and Zoning Commission Meeting Minutes – April 15, 2021

I Call to Order

The Berlin Planning and Zoning Commission held a Regular Meeting on April 15, 2021 at 7:00 p.m. by remote WebEx conference. The meeting was called to order at 7:11 p.m.

In attendance

Chairwoman Joan Veley

Commissioners George Millerd; Brian Rogan; Steve Wollman; Timothy Zigmont

Alternate Commissioner Stephen Biella, Jr. (seated as noted)

Alternate Commissioner Andrew Legnani (seated as noted)

Alternate Commissioner Peter Zarabozo (seated as noted)

Acting Town Planner/ZEO Maureen Giusti, AICP

Zoning Enforcement Officer Adam Levitus, PE

Excused

Commissioners Diane Jorsey; Jon Michael O'Brien

II Approval of Minutes

a. March 18, 2021

Commissioner Zigmont moved to approve the minutes, as presented.

Commissioner Rogan seconded the motion which carried unanimously.

III Schedule Public Hearings

a. Proposed Amendment of Timothy Sullivan, Esq. to amend Section VI.C.2 (Special Design District Special Permit Uses)

Suggested Date: May 20, 2021

Commissioner Zigmont moved to schedule the public hearing for May 20, 2021.

Commissioner Biella, Jr. seconded the motion which carried unanimously.

b. Special Permit/Site Plan Applications of Tasca Ford CT for a 32,495 sq. ft. one story building to be used as a truck repair facility, at 250 Webster Square Road and 73 Woodlawn Road.

Suggested Date: May 20, 2021

Commissioner Zigmont moved to schedule the public hearing for May 20, 2021.

Commissioner Biella, Jr. seconded the motion which carried unanimously.

Ms. Giusti requested the following item be added to the agenda:

- Schedule for Public Hearing – Priority LLC Special Permit/Site Plan Applications of Priority LLC for construction of two new buildings totally 25,400 sq. ft. and related parking, drives and site improvements at Block 115, Lot 20A, Orchard Road
Suggested Date: May 20, 2021

Commissioner Zigmont moved to add the item to the agenda.

Commissioner Biella, Jr. seconded the motion which carried unanimously.

Commissioner Wollman moved to schedule the public hearing for the applications for May 20, 2021. The motion carried unanimously.

IV New Business

- a. Berlin Lions Agricultural Fair, Inc. List of Events 2021, Joseph Dornfried, Esq.

Mr. Joseph Dornfried, Esq. stated most events are the same with a few, smaller added events. He stated staff comments had been received.

Commissioner Wollman moved to approve the List of Events 2021, subject to staff's ensuring the health and safety of any added events.

Commissioner Zigmont seconded the motion.

Discussion

Commissioner Zigmont stated railroad ties should be removed from the fairground before any event takes place.

Ms. Giusti stated town staff has reviewed activities held at the north end of the fairgrounds. They are under the authority of PURA and the enforcement to remove the Eversource activities does not fall under zoning enforcement. Staff and town hall officials have had discussions with Eversource and the Lions. Eversource should have wrapped up activities and future activities will be held elsewhere. The town is monitoring any activity under the town's authority.

The motion carried unanimously.

V Public Hearings

Ms. Giusti read the Call of the Hearings.

- a. Special Permit Use Application of William J. Watson for an Accessory Dwelling Unit at 168 Blue Ridge Road

Mr. William Watson, III, stated the unit will be for his mother. The unit will be in a previously constructed addition and include a kitchen, bedroom, and bathroom. The unit will have an open floor plan and have its own entrance. Fire codes and proper permits will be met. An architect has been hired. The master bedroom suite will be relocated to an addition at the top of the garage. The house has had public sewer and water for at least ten years which was connected when the original owner of the home constructed additions.

Ms. Giusti stated if approved, the Special Permit will be filed on the Land Records and certification continued on a yearly basis. A letter submitted by the Kensington Fire District states the property has public sewer and water. Although the existing addition footprint is 708 sq. ft., the plan will easily meet the required less than 700 sq. ft. for unit area and permit plan should reflect that reduction.

Chairwoman Veley stated for the record the purpose of the dwelling is to provide a certain level of care and if the house is sold, the ADU should not turn into a rental unit.

Mr. Watson stated their intention is for family use.

Ms. Giusti stated the regulations are specific to the parameters about the occupancy of the ADU which requires a yearly certification and does not have the requirement of the occupant's having to be a relative.

Commissioner Zigmont moved to close the public hearing.

Commissioner Rogan seconded the motion which carried unanimously.

- b. Zone Change Request of BT 2008 LLC to change the zone at 404 Berlin Turnpike (Map Lot Block: 10-2-83-12-7333) and Map Lot Block 10-2-83-12-7334) and (Map Lot Block 10-2-83-13A) and Map Lot Block: 10-2-83-13C-7509) and (Map Lot Block: 10-2-83-13C-7510) from Berlin Turnpike-1 Zone to Berlin Turnpike Development Zone (BT-1) (Opened 1/21/21, 2/25/21, 3/18/21, Continued to 4/15/21)
- c. Special Permit/Site Plan Applications of BT2008, LLC for a mixed-use development at 404 Berlin Turnpike (Map Lot Block: 10-2-83-12-7333) and (Map Lot Block 10-2-83-12-7334) and (Map Lot Block: 10-2-83-13A) and (Map Lot Block: 10-2-83-13C-7509) and (Map Lot Block: 10-2-83-13C-7510) (Opened 1/21/21, 2/25/21, 3/18/21, Continued to 4/15/21)

Chairwoman Veley stated the two agenda items have been combined for discussion.

Chairwoman Veley noted the applicant has submitted additional information. There was discussion if the Commission was provided sufficient time to review the materials.

Attorney Alter stated they will “walk the commission through” the additional information. He stated the material is not different but has enhanced items to address details that were brought up

at the last public hearing. He stated they have responded to every issue. He stated the applicant supports Dr. Poland's opinion as most appropriate which is that once an applicant has a ten acre site, parcels can be created of two acres or more with respect to the underlying zone. He stated the applicant can comply with either interpretation and Dr. Poland has said the commission has the authority to make the interpretation. At the last public hearing the town's engineering consultant stated he was satisfied with the changes that Mr. Bruton, project engineer, has made and there have been no substantive changes. At the last public hearing, the commission asked for more details regarding "Main Street", amenities, lighting, landscaping and a potential alternative use if the hotel element does not come to pass. This is the information which has been submitted for the meeting.

Chairwoman Veley noted originally Commissioner Legnani had been seated for this meeting, however had been excused from the last public hearing. Commissioner Zarabozo has been at all public hearings. Therefore, Commissioner Zarabozo will be seated for these applications. Commissioner Legnani relinquished his seat.

Mr. Matthew Bruton, PE, BL Companies, Meriden, CT, stated the changes to the plans reflect the commission's feedback from the last meeting. He stated the plans comply with regulations and variances are not requested. In order to create more of a streetscape "neighborhood feel", more landscaped islands and additional crosswalks were added. Other added amenities include benches and bike racks and decorative light fixtures. The focal point will be the clubhouse with more green trees of significant caliber added.

Mr. Wayne Violet, Senior Landscape Architect, BL Companies, Meriden, CT stated one goal of the applicant is to have plans which comply or go above required regulations. Ornamental trees and wide lawn areas are important goals. Regarding stormwater management areas, the landscape plan will provide native species that will also provide a visual benefit. Large scale trees with multi seasonal interest are planned. Ornamental trees will be scattered and there will be a total of 100 trees for the site. Light fixtures for the pedestrian area will be contemporary modern in design. There will not be designated pet areas; however, landscaped islands are conveniently located.

Mr. Mark Joyce, Architect for the project, stated he was reinforcing the "Main Street" development, The community feel has been enhanced by the clubhouse area. Landscaping has been increased. Crosswalks aligned, taller trees and planting for trees proposed for shade, and decorative light poles added. He stated there has been a deliberate effort to bring residents together at the clubhouse. There will be a patio space which can be further developed.

Chairwoman Veley suggested black estate fencing, umbrellas, and flower boxes.

Mr. Joyce stated a pool is proposed and its shape is still in development. He described the clubhouse interior. A mailroom will hold 200 mailboxes.

Mr. D’Addeo added they are considering potential methods for heating the pool.

Mr. Bruton stated there are two alternative uses for the hotel, should a tenant not be established. They are: a) a medical office space or b) 12,000 sq. ft. retail space. The applicant will come back before the commission when the use has been established.

Mr. Scott Hesketh stated at the last meeting, the commission asked about traffic generation and impacts if an alternative use for the proposed hotel building is determined. Regarding the two options, a medical office (less traffic) or a 12,000 sq. ft. retail use (increased traffic), there would be more than enough parking as stated in his April 13, 2021 submitted report which has three tables of information attached.

Attorney Alter stated their plans meet and exceed requirements and no waivers are requested. Attorney Alter stated the commission must make a decision about the ten-acre or two-acre parcels. He stated the applicant favors Dr. Poland’s opinion. If a hotel is not developed, they will come back to the commission with plans to obtain architectural and design approval. If the ten-acre requirement is in place, there will be a permanent open space portion in the rear of the parcel. If lesser parcels are in place, they could deed property to the Land Trust or offer it to the Town for open space. If approval is received for their application, they will continue with the Department of Transportation regarding signalization. They have demonstrated that 40 affordable units, endorsed by the Housing Authority, will qualify to meet the affordability plan. In summary, he stated the plans meet and exceed regulations. No waivers or variances are requested. He stated the proposal provides housing and employment opportunities and a new tax base on the Berlin Turnpike. He requested the public hearing be closed.

Regarding signage, Mr. D’Addeo stated they will submit for signage approval when final tenants have been established. An Inland Wetlands and Water Courses Commission approval has been received; public access to the walking trails will be allowed, with secure access point to the residential area. and the brick façade is proposed instead of stone due to its longer life. White trim has been added at the windows per the commission suggestion.

Dr. Poland responded to Commissioner Zigmont’s request for his opinion regarding the ten-acre question. Dr. Poland stated he believes the intent was to consolidate smaller lots into a larger area for development proposals; however, a conflict exists in the regulations’ language, and the Commission needs to make an interpretation or a text amendment should be made to clarify this issue.

Mr. D’Addeo stated they can comply with either the smaller size lots or ten-acre; however, financing should be a consideration in the commission’s determination as a ten acre parcel with residential and commercial won’t be able to be financed.

Commissioner Wollman moved to close the hearing.

Commissioner Zigmont seconded the motion.

Discussion

Ms. Giusti stated there is a good number of items to consider, including lot size and signage. She requested the applicant submit a table of contents of the proposed plan set with revision dates.

The motion carried unanimously.

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

Attorney Sullivan stated at the last meeting, a lengthy presentation had been done and was not site specific. He asked if appropriate commissioners were seated.

Chairwoman Veley stated Alternate Commissioner Biella Jr had been seated at the last meeting and is seated at this meeting. Alternate Commissioner Zarabozo who attended the last meeting and wasn't seated will be seated at this meeting. Alternate Legnani who was not in attendance at the last meeting relinquished his seat for the next agenda item.

Attorney Sullivan stated, on behalf of his client for this application, that the proposed convenience store may be amended from 5,000 sq. ft. to 3,500 sq. ft. He noted a typographical error – iii. Stating CCD2 should be revised to BT-1. He stated he agrees with Ms. Giusti's staff comments. With regard to Commissioner Millerd's asking if this amendment should include EV charging stations, Attorney Sullivan stated the use is evolving and stations with charging stations may need larger stores with more amenities while vehicles are charging.

Mr. Joseph Bajorski, Butternut Lane, spoke in favor of the proposed amendment, as amended.

There was discussion of amending the application to state "vehicle fueling stations".

Commissioner Millerd moved to close the public hearing.

Commissioner Zarabozo seconded the motion.

Discussion

Mr. Peter D'Addeo, stated should this application receive approval, his proposed building for the gas station as discussed in the prior public hearing at this meeting, would not comply with the regulations.

Ms. Giusti clarified that this regulation is for a specific type as a vehicle fueling station and the regulations text for gasoline filling stations is not being altered.

Attorney Sullivan stated the amendment would not relate to Mr. D'Addeo's site.

Ms. Giusti stated the application is a text amendment without a specific site. She clarified current zones in the area: The southeast corner of Deming Road and the Berlin Turnpike (BT2 zone); Triangle shaped parcel with a gas station (BT-1 zone); and the current zone of Mr. D'Addeo's proposal is to rezone its current zone to the BT2 zone.

Commissioner Millerd moved to close the public hearing. Commissioner Zigmont seconded the motion. The time for extension regarding the Governor's Executive Orders was discussed. Both the motion and second were withdrawn by the commissioners.

Commissioner Zigmont moved to continue the public hearing to May 6, 2021.

Commissioner Zarabozo seconded the motion.

Ms. Giusti polled the commission.

Voting AYE: Commissioners Millerd, Zigmont, Rogan, Veley, Wollman, Zarabozo, Biella, Jr.

Commissioner Zarabozo relinquished his seat. Commissioner Legnani was re-seated.

e. Proposed Amendment to the Berlin Zoning Regulations of Timothy Sullivan, Esq. for New Section XI.DD – Planned Residential Infill Development

Attorney Sullivan reviewed the average acreage of the motels on the Berlin Turnpike. He stated the motels had been constructed in 1910 to the 1950's. All of the twelve he discussed were under two acres. Days Inn Hotel and Best Western Hotel are exempt from this amendment as they are on property greater than three acres. He stated by statute, none of those mentioned had affordable units; they may be developed by rental or condo; the amendment can be revised to state each unit will not exceed 1,000 sq. ft. If the amendment is adopted, development of the motels would then be controlled by the special permit process. He noted his client has two properties. If approved, an applicant would need to submit a stormwater management plan; appropriate applications, and a traffic statement or a traffic study, if required.

Mr. Chris Edge, Director of Economic Development, stated his support for the amendment. He stated he had brought this concept to the Commission this past Fall. He stated the affordability should be part of the discussion.

Attorney Sullivan stated permanent housing would replace short term housing; there could be ten units per acre; the text is supported by the Plan of Conservation and Development; the amendment will provide an opportunity for the town to alter the perspective of the Berlin Turnpike. He noted the Capitol regional agency commends the effort for this amendment.

Chairwoman Veley stated the height of the units should be considered due to the nearby residential development.

Ms. Giusti stated many points have been discussed. The motels were built from 1910 to 1950's with most having one manager unit and no laundry facilities. Some are used as permanent living residences and there are transient uses. Many buildings are deteriorating, vacant, or in disrepair. The applicant may provide more housing data if the hearing is left open.

Attorney Sullivan stated he will revise the proposed language submittal information and agreed the hearing should be left open.

Commissioner Wollman moved to continue the public hearing to May 6, 2021.
Commissioner Rogan seconded the motion which carried unanimously.

VI Old Business

- Special Permit Use Application of William J. Watson for an Accessory Dwelling Unit at 168 Blue Ridge Road

Commissioner Wollman moved to approve this application, subject to compliance with zoning regulations and a yearly renewal of the approval.

Commissioner Rogan seconded the motion.

Discussion

Ms. Giusti stated the parameters of the regulations concerning occupancy are not specific to "in-law" residency.

The motion carried unanimously.

- Zone Change Request of BT 2008 LLC to change the zone at 404 Berlin Turnpike (Map Lot Block: 10-2-83-12-7333) and Map Lot Block 10-2-83-12-7334) and (Map Lot Block 10-2-83-13A) and Map Lot Block: 10-2-83-13C-7509) and (Map Lot Block: 10-2-83-13C-7510) from Berlin Turnpike-1 Zone to Berlin Turnpike Development Zone (BT-1)

Commissioner Zigmont moved to approve the application.

Commissioner Wollman seconded the motion.

Ms. Giusti polled the commission.

Voting AYE: Commissioners Millerd, Zigmont, Rogan, Velej, Wollman, Zarabozo, Biella, Jr.

- Special Permit/Site Plan Applications of BT2008, LLC for a mixed-use development at 404 Berlin Turnpike (Map Lot Block: 10-2-83-12-7333) and (Map Lot Block 10-2-83-12-7334) and (Map Lot Block: 10-2-83-13A) and (Map Lot Block: 10-2-83-13C-7509) and (Map Lot Block: 10-2-83-13C-7510)

Commissioner Zigmont moved to approve the applications, subject to staff comments.
Commissioner Wollman seconded the motion.

Discussion

There was discussion of the 10 acre or 2 acre requirement and conditions of approval.

The commission consensed it would be best to wait one more meeting to allow Ms. Giusti to submit a more detailed motion for consideration.

Commissioner Zigmont withdrew his motion.
Commissioner Wollman withdrew his second.

No action taken. The agenda item is continued to the May 6, 2021 agenda.

- Proposed Amendment to the Berlin Zoning Regulations of Timothy Sullivan, Esq. for new section VI.G.3.33 – Gasoline Filling Stations

No action taken. The agenda item is continued to the May 6, 2021 agenda.

- Proposed Amendment to the Berlin Zoning Regulations of Timothy Sullivan, Esq. for New Section XI.DD – Planned Residential Infill Development

No action taken. The agenda item is continued to the May 6, 2021 agenda.

VII Commission Business

a. Discussion of 2023 Plan of Conservation and Development

Ms. Giusti stated there have been three proposals in response to the RFQ for the 2023 POCD and 2022 Affordable Housing Plan. A committee will be established for interviews. The next step would be to obtain a scope of work and fee proposals. She encouraged commissioners to keep an ongoing file for distributed items. A meeting schedule for the POCD committee will be established.

b. Other items of interest: Special Act 21-3 regarding outdoor uses

Information has been distributed in the meeting package. The Act provides for patios and sales to continue outdoors as allowed by expiring Executive orders extends to March 2022.

VIII Adjournment

Commissioner Biella Jr. moved to adjourn the meeting.

Commissioner Rogan seconded the motion which carried unanimously.

The time was 11:26 p.m.

Respectfully submitted,

Frances M. Semnoski

Recording Secretary

Berlin Planning and Zoning Commission

Special Meeting Minutes of April 30, 2021

The Berlin Planning and Zoning Commission held a special meeting on Friday, April 30, 2021 at 3:30 P.M. by remote Zoom Conference. The public was able to access the meeting by video or telephone as provided on the agenda with the posted access information.

Chairman Veley called the meeting to order at 3:34 P.M.

She explained access, posting and information about the meeting and noted the purpose of the meeting to provide guidance to the Zoning Enforcement Official regarding issuance of a Certificate of Occupancy for a new industrial structure at 166 Old Brickyard Lane.

Acting Town Planner Maureen Giusti called the role:

In attendance:

Chairman Veley, Commissioners Timothy Zigmont, Steve Wollman, Peter Zarabozo, Alternate, Andrew Legnani, Alternate

Commissioner Diane Jorsey joined the meeting at approximately 3:47 p.m.

Commissioners excused: George Millerd, Brian Rogan, Jon Michael O'Brien, and Steve Biella, Jr., alternate.

Staff in attendance: Maureen Giusti, AICP, Acting Town Planner/ZEO

Chairman Veley called upon Ms. Giusti to summarize and explain the zoning concerns.

Ms. Giusti read from her prepared summary:

Thank you for accommodating this special meeting request. I also ask for your patience as we have moved to Zoom I need to learn navigation, screen sharing on this platform and host responsibilities such as muting and identifying participants.

I am going to speak for a few minutes to provide a summary of the project and reason we have requested your guidance on the CO request:

The developer/property owner is seeking the certificate of occupancy for a newly constructed industrial style building at 166 Old Brickyard Lane. A tenant is lined up that will be relocating their Building Materials Warehouse with Executive Offices to Berlin. The building was approved to be built on vacant land at the southerly end of a combined parcel that was previously four lots.

At the time of the approval, May 2017, four separate lots included vacant land where the new building (#166) is constructed, a non-conforming 2-family residence (#196) immediately adjacent moving north, another non-conforming 2-family (#204), and the last lot (#212) contained the now vacant Grady auto garage and a building used as office space.

As all the lots were non-conforming to size and in the same ownership, they were combined to create a single parcel to allow the new industrial building. The combined parcel is now identified as Lot 85-1

The application has been described by the developer as phase one of redevelopment of the parcel for a new industrial complex.

The approved plan included extinguishment of the non-conforming residential uses. This was to be accomplished by demolition of the two-family house at #204 and conversion of the two family (196) immediately adjacent to the new building into a conforming caretaker unit for the property and conversion of the other unit into the industrial use office space.

While in my opinion, the CO request was made prematurely and before the site was ready, and required documentation was prepared to the satisfaction of the Town, the developer has since completed much of the site work, Engineering has calculated a site bond for remaining improvements, the new building construction has been completed and as I understand passed code inspections, as built plot plan work related to the new building has been submitted, and a certification has been received that the caretakers unit is occupied in compliance with the regulations as recommended by the planner at the time of the approval. I am working on review of the lighting plan which was received at the beginning of the week.

In consultation with the building official, yesterday, the only outstanding issue that appears to remain prior to his issuing the certificate of occupancy for the new building is zoning officer approval for the CO request.

As zoning official, I am asking for commission guidance with regard to zoning compliance. The dwelling unit at #196, adjacent to the new warehouse, which was to be converted to office space remains occupied by a residential tenant in addition to the caretaker unit.

The property owner has commenced eviction proceedings through the courts, to which the tenant has answered, and mediation is scheduled for next month. It is unknown if tenancy will be resolved at that time. In the meantime, the property owner has a contract with the new industrial tenant that is under deadline to expire without issuance of a CO.

The question to the commission is whether or not you are opposed to granting zoning sign off for occupancy of the new building.

I will note sign off could be:

-conditional with a deadline for compliance perhaps relating to resolution of the eviction timing or

-be a sign off for the new building and compliance be pursued as an enforcement issue after the civil eviction matter has been resolved.

-generally the zoning and official has some discretion with regard to pending issues at the time of CO request, and matters such as the owner working towards removal of unauthorized storage of vehicles and equipment at the northerly end of the site (#212) in the area of the now vacant Grady Garage, might be handled as an enforcement matter allowing for issuance of a CO. however given the complexity of the issues including that residential uses were considered during the approval process, in consultation with corporation council we determined it was appropriate to bring the policy decision to the commission.

In summary we are asking if the commission is comfortable with authorizing the zoning official to sign off on zoning compliance for a CO on the new industrial building which would allow the new tenant to locate to Berlin. The developer's attorney had a conversation with Attorney Coppola and I, indicating that the contract with the industrial tenant is time sensitive, thus the request for this special meeting. It is unknown by me if it would be affected by issuance of a conditional, rather than full CO.

I believe Attorney Coppola and interested parties, including the developer and/or his attorney and the residential tenant may also be in attendance, should you want to allow them to speak.

I'll look at the participant log to see if anyone else is in remote attendance.

Thank you.

As the summary was read and the property was described Ms. Giusti presented the GIS 2019 aerial and planimetric map of the area, as well as the approved site plan.

Chairman Veley asked Ms. Giusti to repeat the options she presented regarding the CO.

Commissioner Zigmont questioned if there were other zoning issues besides the one tenant including if the nonconforming dwellings at 204 existed and any other violations.

Ms. Giusti explained that the residential structure at 204 had been demolished, a garage remained which she understood from other officials was being used for storage, and that the area around the former Grady garage at 212 Old Brickyard Lane has unauthorized storage of vehicles and equipment.

Commissioner Zigmont summarized there are two noncompliance matters: vehicles and the dwelling unit with residential tenant that is also a civil matter relating to eviction. He expressed that zoning violations should be resolved prior to zoning signoff for occupancy as it is one lot.

Commissioner Wollman noted that the eviction process is complicated by the status of Executive Orders and the current court constraints. He indicated his opinion that the new business coming into Town should not be punished for what could be a lengthy legal delay, noting that tenants have been taking advantage of the Executive Orders dealing with evictions.

Chairman Veley inquired if we knew if the new building was being sold or leased.

Ms. Giusti responded that the 4 lots had been combined into a single parcel, and therefore the property would be one, but did not know if the building would be held as a condo or tenant space.

Commissioner Wollman noted that the CO should not be issued until the property was in compliance except for the resident which is subject to civil. He inquired if we knew it was a court matter?

Ms. Giusti confirmed that Attorney Coppola, our counsel, had checked the court record and found the eviction was filed, and answered by the tenant and a mediation date was indicated for mid-May.

Commissioner Wollman gave his opinion that vehicles should be removed, then the CO could be issued.

Commissioners Zarabozo stated he was in agreement with Commissioners Zigmont and Wollman and that once the property is cleaned up the CO can be issued.

Commissioner Legnani agreeing with others added concern that the Town not be vulnerable in the civil matter.

Commissioner Jorsey indicated her opinion that the lot condition be resolved prior to CO, and not involve in the court matter.

Chainman Veley questioned, what if the Town allows the CO and the eviction action went away; what assurances does the town have that eviction will move forward or will the owner discontinue eviction once the CO is issued? What vehicle is available to the town for total compliance? Then, how would the Town get occupancy compliance?

Ms. Giusti responded that it would be a Zoning Enforcement issue.

Commissioner Wollman added that the developer could be fined. He added that the new tenant should not be punished due to courts and Enforcement could handle if the tenant occupancy is not handled by the court.

With no objection from the commissioners, Chairman Veley stated the discussion has indicated consensus among the commissioners that once the unauthorized storage is removed from the property and any required bonding is in place, then the Zoning Official could signoff on the Certificate of Occupancy, adding that enforcement action would be taken at the appropriate time should the unapproved residence remain after the court issue is resolved.

Steve Wollman made a motion to adjourn the meeting, seconded by Commissioner Legnani.

With no objection the meeting adjourned at 4:07 p.m.

Respectfully submitted,

Maureen K. Giusti, Acting Town Planner/ZEO

Special Event - 2021

Application: Special Event
Project Name: 2020 Fireworks Tent Sale Temporary Tent for Fireworks Sale
Address: 502 Berlin Turnpike (10-2-83-13 B)
Zone: BT-1
Applicant: Keystone Novelties Distributors LLC
Owner: 550-554 Berlin Turnpike Associates, LLC
Proposal: Temporary Tent for Fireworks Sale

PROPOSAL

Keystone Novelties Distributors LLC submitted an application for a special event to install a temporary tent for the selling of legal fireworks at 502 Berlin Turnpike in the BT-1 zone from June 23–July 5, 2021.

STAFF COMMENTS

1. This has been an annual special event for several years. The applicant should identify and explain to the Commission any changes for this year.
2. The 2021 hours of operation are 9am to 9 pm from June 23rd to July 1st and 9am to 10 or 11pm from July 2nd to July 4th.
3. Tent and electrical permits are required through the Building Department.
4. Temporary signage requires permitting and should be removed by July 9th. Signage shall be onsite.
5. Fire Marshal shall complete a compliance inspection prior to opening.
6. COVID-19 safety measures required (mask wearing, social distancing)

EXISTING CONDITIONS

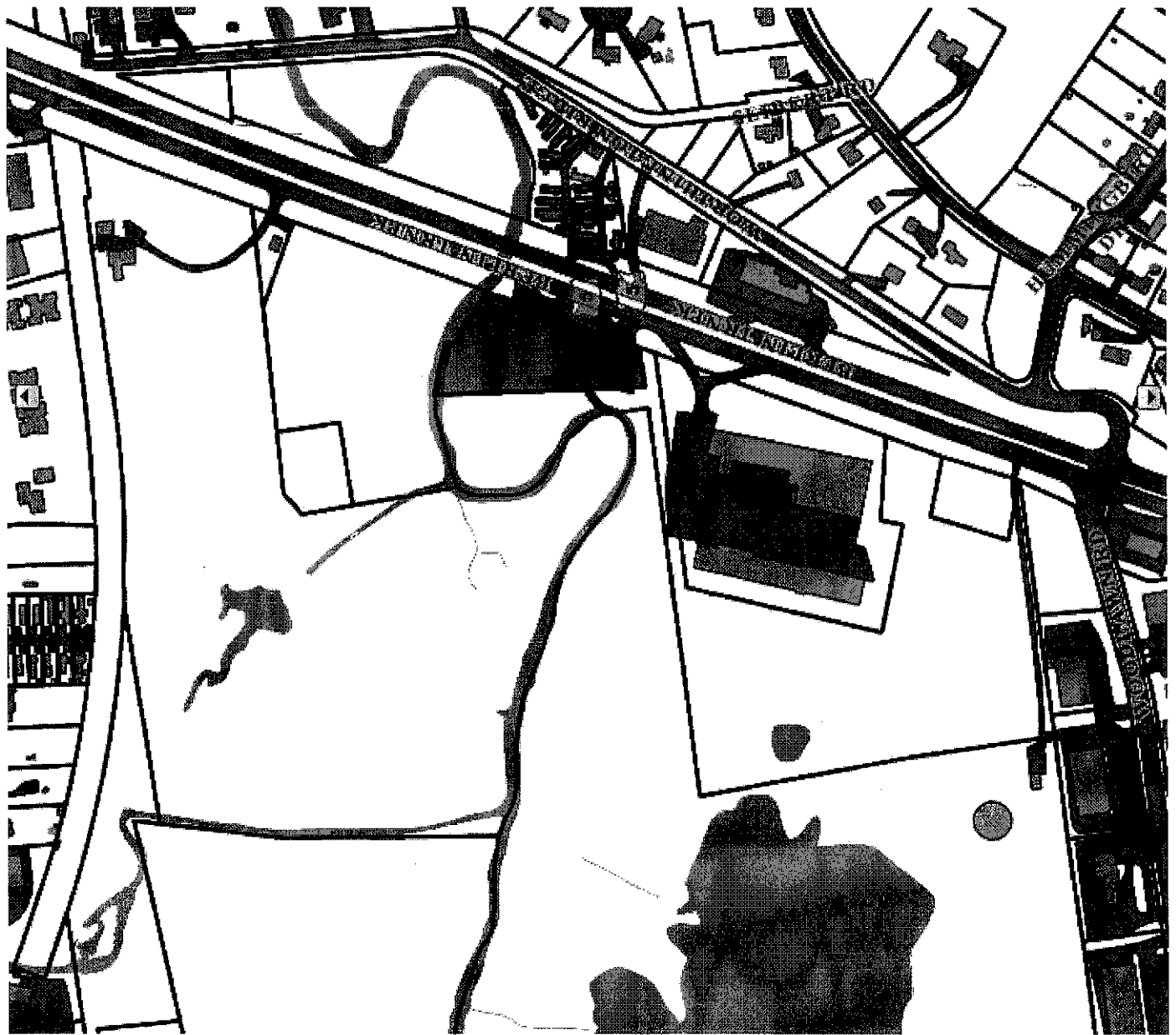
Site conditions remain consistent with past years. The property and the adjacent parcel remain owned by 550-554 Berlin Turnpike Associates LLC. with this use at their parcel identified as 502 Berlin Tpke, MBL 10-2-83-13 B. The parcel is improved with a parking area and two curb cuts and is otherwise vacant but contiguous and in common ownership with a 6.47 ac property improved with two manufacturing buildings, parking and loading areas and a vacant land to the west.

ANALYSIS

No zoning issues have been reported in previous years for the site. The vendor has been selling annually at the site since the 2015 season. As with past events, the applicant proposes to install a 20 ft x 40ft tent on the back edge of the parking area on the vacant portion of the property for the sale of CT State Legal Fireworks for a duration starting June 27, 2018 to July 5, 2018. With hours as noted above. The tent will be removed by July 9th. The applicant also proposed a temporary storage container to be located on site during the tent sale.

The Planning & Zoning Commission has approved similar size and location of tents and sale of fireworks by the same vendor each year since 2015.

Department Staff Comments attached.



March 31, 2021

Updated April 7, 2021 (Engineering)

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

APPLICATION: Special Event
APPLICANT: Keystone Novelties
LOCATION: 550 Berlin Turnpike
AGENDA: May 6, 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 or revised plans directly to the Planning & Zoning Department in Room 121. We will forward your comments or distribute materials to the relevant department.*
-

Building Official

- Tent and electric permits required

Health District

- Must practice Covid-19 safety measures (mask wearing; social distancing)

Board of Police Commissioners

- See Police Chief's comment

Police Chief

- No comment

Fire Marshal

- A compliance inspection is required prior to opening.

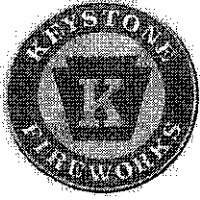
Berlin Water Control

- No comment

Engineering

- No comment

Emailed to Applicant: April 7, 2021



Keystone Novelties Distributors, LLC

201 Seymour Street, Lancaster PA 17603

Ph. 717-390-0844 Fax: 717-290-7774

Info@keystonenovelties.com

March 3, 2021

**Town of Berlin
Received**

MAR 12 2021

Town of Berlin, CT 240 Kensington Rd
Berlin, CT 06037
Attn: Frances Semnoski

Planning & Zoning Department
Berlin, Connecticut

Frances,

We are in the process of planning for our annual Fourth of July tent sale. This year we will be returning to the location at 550 Berlin Turnpike, Berlin for the sale of CT State Legal Fireworks from June 23 through July 5. The hours of operation for our sale will be the same as last year from 9AM to 9PM with extended hours on the 2nd 3rd and 4th of 10 or 11pm during this period. I have included the following in this packet:

- A Completed Site Plan Approval Application
- A Letter of Permission from the landlord
- A Plot Map diagram showing the location of the tent
- A Tent Layout showing tables and exits
- A copy of the tent fabric Flame Retardant Certificate
- A Starting Inventory list
- A graphic showing the Proposed Signage and sizes that we will attach to the tent ropes
- A Check for \$210 (\$150 for the Event and \$60 for the State of CT Solid Waste Management Fund)

The tent will be put up a few days in advance and removed as soon as possible after July 5. We will have "No Smoking" signs placed at the entrance and will have a fire extinguisher on hand at all times.

Thank you again for your consideration. Should you have any questions or if anything has changed for this year, please call anytime at 717-394-1078.

Thank you
Alex Mutzabaugh

Keystone Novelties Distributors
Field Ops Manager
717-394-1078
AMutzabaugh@keystonenovelties.com

Application fee paid \$210. —



Keystone Novelties Distributors, LLC

201 Seymour Street, Lancaster PA 17603

Ph. 717-390-0844 Fax: 717-290-7774

Info@keystonenovelties.com

January 31, 2020

Town of Berlin
240 Kensington Rd #2
Berlin CT 06037
Attn: Planning & Zoning Board Narrative

Keystone Novelties is once again in the process of planning our annual Fourth of July tent sale of CT legal sparkling devices. Below we provide an outline of our schedule:

Sale Information:

- The location of the tent sale will be 550 Berlin Turnpike, Berlin CT
- We will begin our sale after any required inspections on June 25th. Our last day of sales shall be July 5th and the tent removed by July 9th. We operate from 9 am to 9 pm except on July 2, 3 and 4 we are open until 10 or 11 pm. During the evening, the sides of the tents will be put up the entire way around the tent and there will be someone on site from dusk to dawn.
- The tent will be anchored by stakes every ten feet around the perimeter.
- We will have "No Smoking" signs posted at the entrances and fire extinguishers on hand at all times.
- All our direct sellers are required to undergo 24 hrs. of online training to address safety and operational concerns.
- We provide a list of products and site-specific information in the site plan review application packet respectfully submitted with this narrative.

Thank you again for your consideration. Should you have any questions or if anything has changed for this year, please feel free to contact me.

Thank you
Alex Mutzabaugh

Keystone Novelties Distributors
Field Ops Manager
717-394-1078
AMutzabaugh@keystonenovelties.com



**PLANNING AND ZONING COMMISSION
SITE PLAN APPROVAL APPLICATION**

Site Plan ☐ or *Site Plan Amendment ☒ **Special Event

APPLICANT Name Keystone Novelties Distributors LLC
Address 201 Seymour Street, Lancaster PA 17603
Telephone 717-394-1078 Fax 717-2907774
Signature _____

OWNER (IF NOT THE APPLICANT)

Name 550 - 554 Berlin Turnpike Associates, LLC
Address 864 Weathersfield Ave., Hartford, CT 06114
Telephone 860-616-4022

WITH THE SIGNING OF THIS APPLICATION, I GIVE MY CONSENT THAT ANY TOWN
OFFICIAL AND/OR EMPLOYEE THAT THE TOWN DEEMS NECESSARY MAY ENTER MY
PROPERTY TO VERIFY INFORMATION SUBMITTED FOR THIS APPLICATION

Signature:  Date: 3/9/2024

PROPERTY DATA Address 522 Berlin Turnpike, Berlin CT

Lot/Block _____ Zoning _____

Proposed Use Erect Temporary Tent for the Sale of CT

State Legal Sparkler Products

	YES	NO
Wetland	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Water Course	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Flood Hazard Zone	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Flood Plain	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the subject property within 500 feet of another municipality?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

*Berlin Planning and Zoning Commission
Site Plan Approval Application
Page 1 of 5*



Keystone Fireworks

201 Seymour Street, Lancaster, PA 17603

(800) 390-0844 Fax (717) 290-7774

info@keystonenovelties.com

THIS AGREEMENT IS MADE BETWEEN 550-554 Berlin Turnpike Associates, LLC (Lessor) and Keystone Novelties Distributors, LLC (Lessee) for the purpose of allowing the retail sale of approved fireworks from the following premises (Location):

Location Address:
550 Berlin Turnpike
Empty Lot
Berlin, CT 06037

Location Name: BERLIN CT TURNPIKE
ASSOCIATES

Lessor Agrees to the following terms and conditions:

1. Lessor represents that the parking lot or commonly occupied Location listed above is owned and/or controlled by the Lessor and that the Lessor grants Lessee the exclusive right to operate a retail fireworks tent or outlet including the placement of a 20 foot storage container and a portable toilet on the premises during the term of this Agreement.
2. The term of this Agreement shall include the 2021 thru 2023 July 4th holiday period(s). The tent and related equipment shall be placed no sooner than June 19th and removed no later than July 11th each year. The actual dates for the sale will not exceed: June 22nd through July 6th of each year.
3. Following the initial term, the Lessor hereby grants the Lessee First Rights of Refusal to match any bona fide offer to lease the location for fireworks sales during the forthcoming renewal year.
4. Lessor will have the right to void this lease if the above Location is sold or developed for any purpose other than the sale of fireworks by providing 60 days written notice prior to cancellation.
5. Lessor agrees to provide the following: (answer questions below by selecting YES or NO & initial each selection)
 - a. Allow 28 ft return trailer (Backhaul trailer) to be set at the property ☒ YES ☐ NO _____ (initials)
 - b. Allow access to electricity for the tent if it available on the property ☐ YES ☒ NO _____ (initials)

In return, Lessee agrees to the following terms and conditions:

1. Lessee shall pay to Lessor rent in the amount of [REDACTED] by check on or before June 20 each year.
 - a. In addition, [REDACTED] of net sales (gross sales-sales tax) over [REDACTED] will be paid by August 1 for each season, supporting documentation of gross sales will be provided at the end of the season with payment.
2. Lessee shall provide liability insurance coverage and post with Lessor, prior to occupancy, a certificate of insurance evidencing liability insurance in force covering the operation on the retail outlet. All entities/individuals listed on the certificate of insurance will be deemed as additional insureds per this contract. Insurance coverage will be in an amount not less than \$1,000,000.00.
3. Lessee guarantees that the premises will be returned to its original condition including the patching of any stake holes and removal of trash and supplies.
4. This Lease Agreement shall be assignable by Lessee and is contingent upon Lessee securing any local and state permits or licenses that may be required by law. If the sale of fireworks is prohibited by public authority or if required permits or licenses cannot be obtained prior to the commencement of the selling season, then this lease agreement automatically becomes null and void. If the local municipality having proper jurisdiction over this outlet limits the sale of fireworks or implements policies inconsistent with state statutes, then this Lease Agreement is subject to revision.
5. Lessee shall have the right to void this agreement up to 60 days prior to the commencement of the selling period each year.

LESSOR (Payee) INFORMATION (Please Update as Needed)

550-554 Berlin Turnpike Associates, LLC
864 Wethersfield Avenue

Hartford, CT 06114

Ph: 860-249-6521 Email: nicholas.marizio@colliers.com

ADDITIONAL INSURED INFORMATION

Berlin Turnpike Associates, LLC.

Lessor

Date

Keystone Novelties Distributors, LLC

Date





For Office Use Only

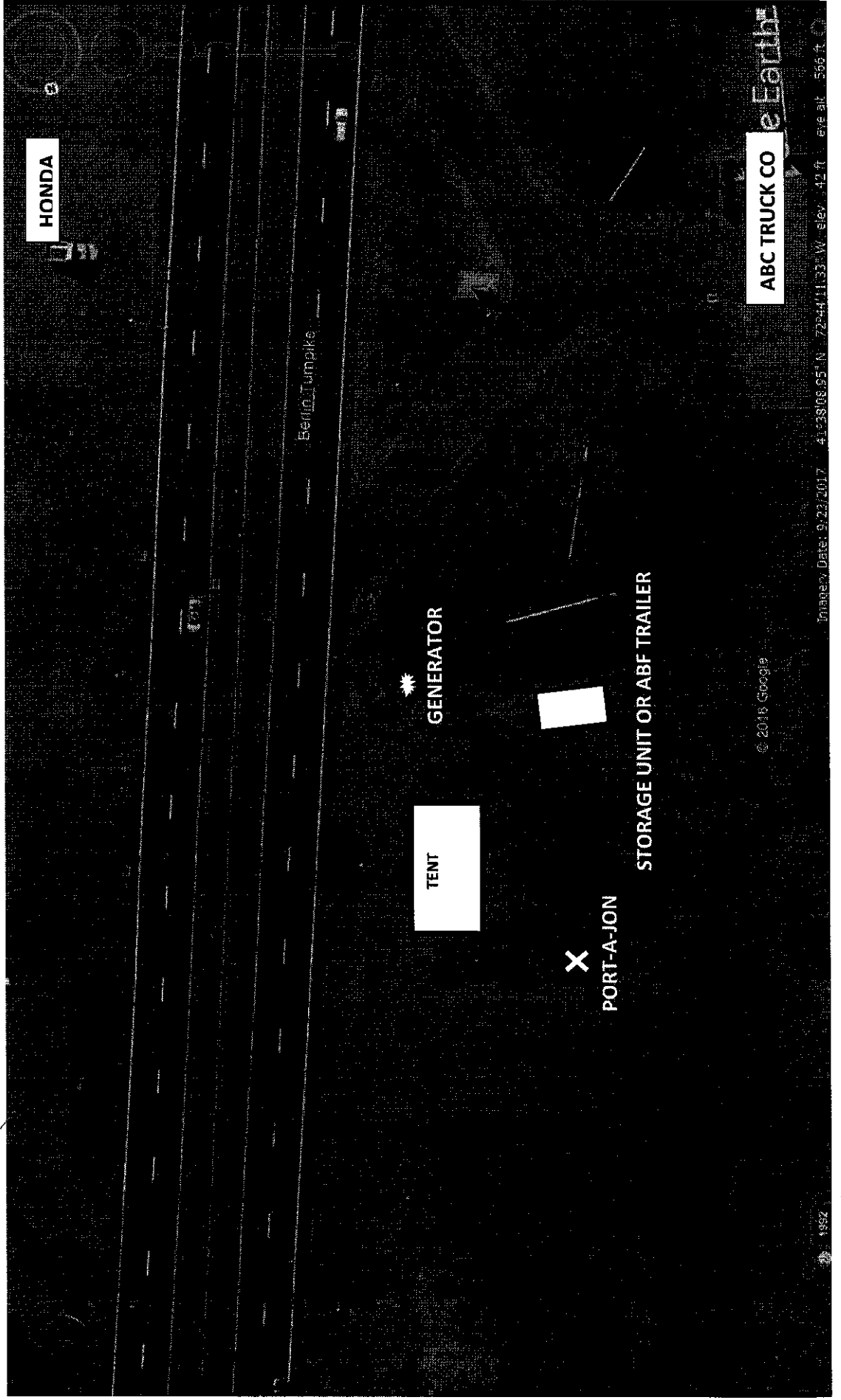
☐ \$125 LL Cert ☐ \$75 LL Cert ☐ \$50 LL Cert ☐ \$150 + \$125 each year Cert ☐ None

TENT LOCATION PLOT PLAN LAST SAVED SEPTEMBER 26, 2017

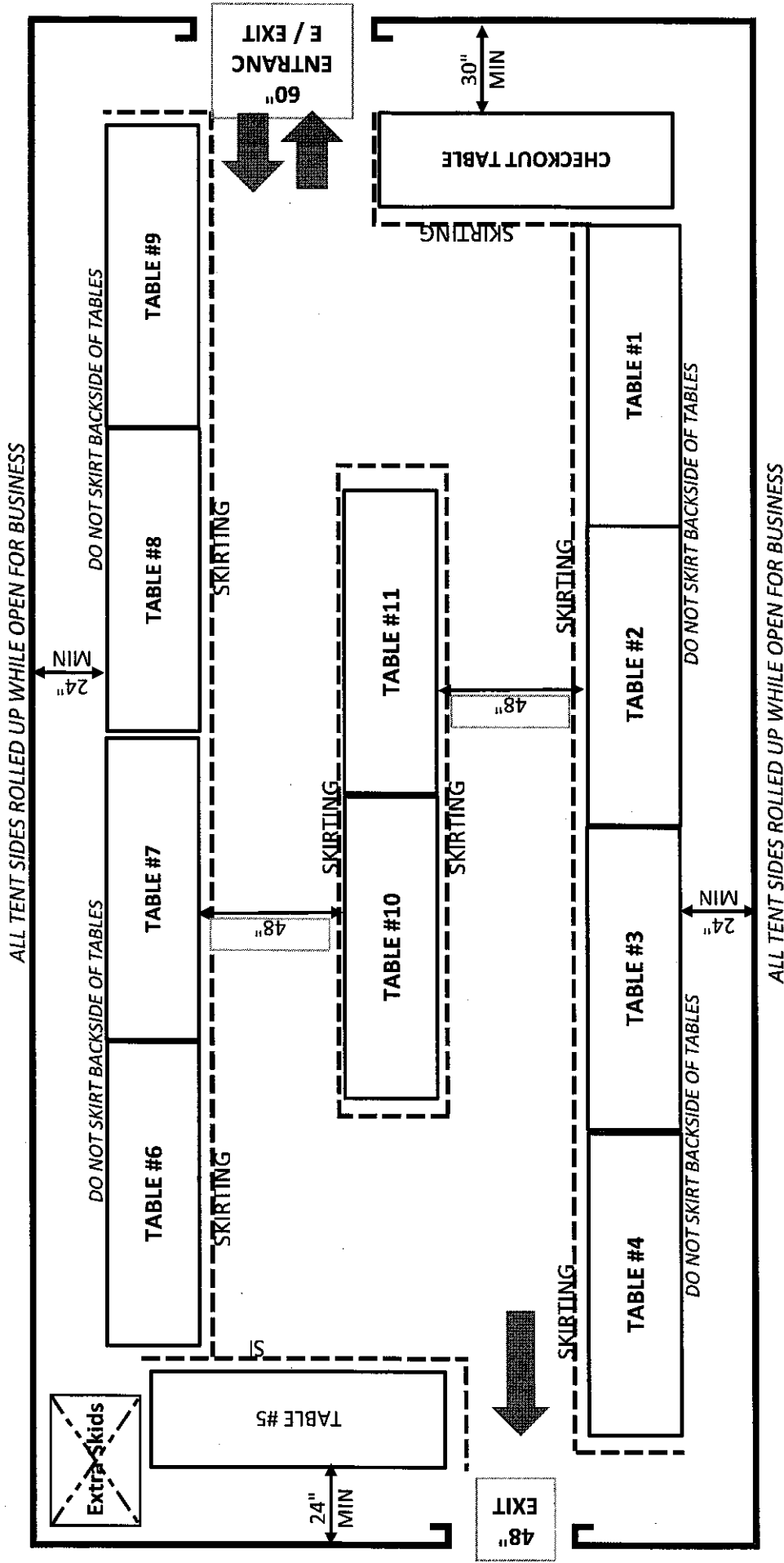
- LOCATION NAME: BERLIN CT TURNPIKE ASSOCIATES
- LOCATION ADDRESS: 550 BERLIN TURNPIKE, BERLIN CT 06037
- NOTES: _____ GROUND GENERATOR IN THE GRASS

LEGEND:

			
PORT-A-JON	GENERATOR	TENT	STORAGE UNIT OR ABF TRAILER



20x40 Tent Layout-2 Exit



Place Mega Monster in a prominent location. See manager for more details*

2021 Beginning Inventory CT

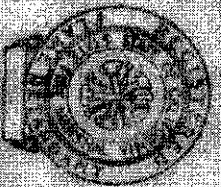
Item	Units	Quantity	Item	Units	Quantity
#8 Gold Sparklers	48	1 cs	Mystic Sundae	16	2 cs
#10 Color Sparklers	576	1 cs	Open Flower Happy Bird	72	1 cs
#20 Gold Sparklers	48	1 cs	Red Riot	36	1 cs
3D Glasses	75	75 pcs	Rising Storm	40	1 cs
Anniversary Celebration	8	1 cs	Silver Star	30	1 cs
Barn Burners	16	2 cs	Spaced Out	16	2 cs
Chase the Ace / Desert Moon	96	2 cs	Tie Dye Surprise	108	3 cs
Crackling Crystals	12	1 cs	Tomahawk Rocket Fountain	144	1 cs
Cuckoo	144	1 cs	Turbo	30	1 cs
Deck The Sky	12	1 cs	Value Pack FTN	12/3	1 cs
Dragon Slayer	60	1 cs	Waterfront Celebration	36	2 cs
Eye of the Storm	24	1 cs	Wrath of the Beast	6	1 cs
Fight Like A Girl	6	1 cs			
Flying Betsy/America the Beautiful	24	1 cs			
Freaky Tiki	8	1 cs	USS Tug of War (\$100 Bonus Item)	48	2 cs
Gotham City	16	2 cs	Russian Roulette (\$200 Bonus)	24	2 cs
HN 90 / Floral Assorted Fountains	144	2 cs			
Jumbo Morning Glory	48	1 cs	ASSORTMENTS		
Killer Bees	48/2	1 cs	Crowd Pleaser	48	4 cs
Lighthouse	12	1 cs	Heavyweight Champion	24	4 cs
Lightning Rod Candles	96	1 cs	High Voltage	12	4 cs
Lil' Big Shot	54/2	1 cs	Jackpot!	24	3 cs
Magic Color Burst	60	1 cs	Larger Than Life	6	3 cs
Maximum Overload	24	2 cs	Mega Monster	2	2 cs
Mini Mystic Sundae	18/4	1 cs	Wild Card	8	2 cs
Morning Glory 14"	360	1 cs			
Extras					
5lb Extinguisher			S & L Sign Holders		
Water Extinguisher			Trays		
8 Baskets (Bags on Top)			Banners		
2 Pennants					
Received By: _____			Tent #: _____		

IMPORTANT DOCUMENT

Certificate of Flame Resistance

REGISTRATION
APPLICATION
NUMBER

F140.1



ISSUED BY

Intertek

EVANSVILLE, INDIANA 47725

MANUFACTURERS OF THE FINISHED
TENT PRODUCTS DESCRIBED HEREIN

Date of Shipment

5/5/2006

Test Identification

6029306

This is to certify that the materials described have been flame-retardant treated
(or are inherently nonflammable) and were supplied to:

781600
CONNECTOUT RENTAL CENTER
30 DEKOVEN DR
MIDDLETOWN CT 064573431

Certification is hereby made that:

The articles described on this Certificate have been treated with a flame-retardant approved
chemical and that the application of said chemical was done in conformance with California
Fire Marshal Code. All fabric has been tested and passes NFPA 701-99, CPAI 84, ULC 165.

Serial #

8029900 (1)

Description of item certified:

FIRST AID ANDABLE TOP 30W X 30
SNYDER WHITE VINYL

Flame Retardant Process Used Will Not Be Removed By
Washing and is Effective For The Life Of The Fabric

SUBS: AFG NEW JERSEY
NAME OF APPLICANT OF FLAME RESISTANT TREATMENT

Signed

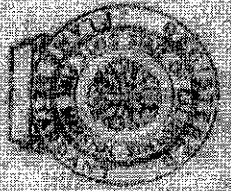
ANCHOR INDUSTRIES INC.

IMPORTANT DOCUMENT

Certificate of Flame Resistance

REGISTRATION
APPLICATION
NUMBER

FL114



ISSUED BY
LANCORN
LABORATORY

EVANSVILLE, INDIANA 47705

MANUFACTURERS OF THE FINISHED
TEXT PRODUCTS DESCRIBED HEREIN

Date of Manufacture
040902

Order Number
25056

This is to certify that the materials described have been flame-retardant treated
(or are inherently nonflammable) and were supplied to:

781600
CONNECTICUT RENTAL CENTER
30 DEKOVEN DR

MIDDLETOWN CT 064573431

Certification is hereby made that:

The articles described on this Certificate have been treated with a flame-retardant approved
chemical and that the application of said chemical was done in conformance with California
Fire Marshal Code, equal to exceeds NFPA 701, CPAI-84, UL-C 100.
The method of the FR chemical application is:

Sample # 802500(1)

Description of item certified
FLEX TEE 30X X30 V. W. W

Flame Retardant Process Used Will Not Be Removed By
Washing And is Effective For The Life Of The Fabric

JOHN BOYLE STATESVILLE NC
Name of Association of Flame Retarded Fabric

Signed: *David D. Bruce*
DAVID D. BRUCE, LANCORN LABORATORY

Keystone Novelties Distributors, LLC
Temporary Signs & the Sizes

4' x 6'



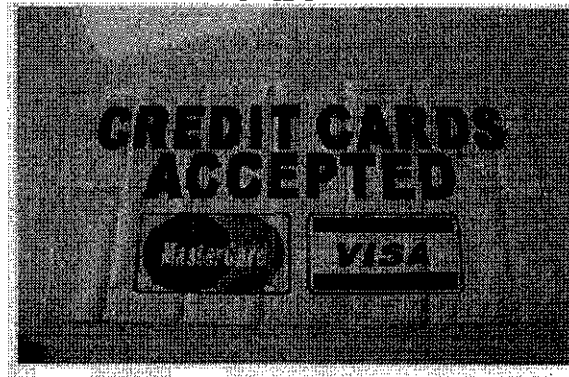
4' x 6'



4' x 6'



3' x 5'



3' x 10'





STATE OF CONNECTICUT

DEPARTMENT OF REVENUE SERVICES



450 COLUMBUS BOULEVARD, SUITE 1

HARTFORD, CONNECTICUT 06103-1837

Date: 04/28/2020

0420**SUT**3117**OPREGM

KEYSTONE NOVELTIES DISTRIBUTORS LLC
201 SEYMOUR ST
LANCASTER PA 17603-5847

Dear Taxpayer:

Attached is your sales and use tax permit. Please display it conspicuously for your customers to see. Any permit previously issued by the Connecticut Department of Revenue Services (DRS) for the specific location noted on this permit is now void and should be destroyed.

Any change in ownership or form of organization requires a new permit. If your business is sold, transferred, or discontinued, return this permit at once to:

Department of Revenue Services
450 Columbus Blvd., Ste 1
Hartford CT 06103-1837

Enter the last day of business and the name of the successor, if applicable, on the back of the permit. Sign the permit as indicated.

Business and individual taxpayers can use the **Taxpayer Service Center (TSC)** at www.ct.gov/DRS to file a variety of tax returns, update account information, and make payments online.

This Tax Permit is valid for two years.

You may not assign or transfer this permit. Display this permit conspicuously for your customers to see.

Department of Revenue Services
State of Connecticut
450 Columbus Blvd., Ste 1
Hartford CT 06103-1837
R603 (Rev. 08/15)

Sales and Use Tax Permit

License Number: 1439570



The person named below is licensed under the Sales and Use Tax Act. This permit is good only for the named permittee and at the location shown. If there is any change in ownership, the permit is null and void.

Date Issued	Expiration Date	Business Start Date	Connecticut Tax Registration Number
04/28/2020	05/31/2022	05/26/2013	58844655-001

Use Only at this Location:

KEYSTONE NOVELTIES DISTRIBUTORS LLC
KEYSTONE FIREWORKS
201 SEYMOUR ST
LANCASTER, PA 17603-5847

KEYSTONE NOVELTIES DISTRIBUTORS LLC
KEYSTONE FIREWORKS
201 SEYMOUR ST
LANCASTER, PA 17603-5847

John Blalock
Acting Commissioner of Revenue Services

This license may not be transferred or assigned.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/21/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Britton Gallagher One Cleveland Center, Floor 30 1375 East 9th Street Cleveland OH 44114	CONTACT NAME:	
	PHONE (A/C, No, Ext): 216-658-7100	FAX (A/C, No): 216-658-7101
INSURED Keystone Novelties Distributors LLC 201 Seymour Street Lancaster PA 17603	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Everest Indemnity Insurance Co.	
	INSURER B: Axis Surplus Ins Company	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES

CERTIFICATE NUMBER: 379658383

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC			SIBML00041-201	12/31/2020	12/31/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			P-001-000241749-02	12/31/2020	12/31/2021	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A						WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Additional Insured extension of coverage is provided by above referenced General Liability policy where required by written agreement.
Group Code: 17603

CERTIFICATE HOLDER**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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City of Middletown

DEPARTMENT OF PLANNING, CONSERVATION & DEVELOPMENT
245 deKoven Drive Middletown, CT 06457

April 29, 2021

Town Clerk
Town of Berlin
240 Kensington Road
Berlin, CT 06037

RE: Proposed Special Exception and Inland Wetland and Watercourses Agency Applications

To Whom It May Concern:

First let me apologize because this should have been sent to you back at the beginning of April.

Please be advised that we received a request for a special exception with regard to Section 25 of the Middletown Zoning Code for the expansion of the truck/trailer parking area and employee parking area at the existing FedEx distribution facility located at 49 Fedex Drive. This was a public hearing on April 14th and April 28th and was continued both meetings. The next public hearing will be May 12, 2021.

We also received an Inland Wetland application since part of the parcel is in the 100 ft. Upland Review Area. The next Inland Wetland meeting will be held on May 5th at 7:00 via Webex.

Meeting to be held online. Members of the public may view/listen to the meeting as follows:

- 1. Going to <https://webex.com> and joining the meeting using the appropriate meeting number and password*
- 2. Launching the WebEx application and joining the meeting using the appropriate meeting number and password*
- 3. Via telephone at 1-408-418-9388 and the appropriate access code*

Meeting Number/Access Code: 1299864127

Event Password: Middletown

This notification is in accordance with Section 8-7d of the Connecticut General Statutes, as amended.

Sincerely yours,

A handwritten signature in cursive script that reads "S. Nesco".

Susan Nesco
PCD Secretary II

RECEIVED FOR *54100
MAY 4 2021

2021 MAY -4 AM 11:07

A handwritten signature in cursive script that reads "Katy G. O'Neil".

PCD SECRETARY II

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Spring 2021

Volume XXV, Issue 2

IMPOSSIBILITY TO COMPLY RAISED AS DEFENSE TO ZONING ENFORCEMENT

A judgment of \$125,000 in daily fines plus \$51,674.00 in attorney fees awarded by a trial was reversed by the State Appellate Court. The case concerned the use of a residentially zoned property as a junkyard and processing center for over a period of 5 years. The homeowner used her home in connection with her business, which was to clean out foreclosed properties. She would, under contract with the foreclosing lender, empty a foreclosed home of its contents and then sell or junk these items. Much of this material ended up at her home, where it was first stored indoors and then overflowed into the front and side yards of her property. The award was made under C.G.S. Sec. 8-12, which provides for daily fines as well as an award of attorney fees where the violation is deemed to be willful.

At trial, the homeowner raised the defense that it was impossible for her to comply with the zoning regulations because shortly after the issuance of the operative cease and desist order, her home was destroyed by fire. Due to an investigation regarding the cause of the fire, she was ordered by the police as well as her insurance carrier to not remove anything from the property. The court agreed that these orders did prevent her from complying with the cease and desist order and reversed the

court's decision as to its award of fines and attorney fees on this basis. A new trial was ordered solely on the issue of making a determination as to these issues. In issuing its remand order, the Appellate Court instructed that daily fines in a civil action are limited to a maximum amount of \$100.00 per day. The \$250.00 maximum amount is limited to a criminal conviction for a zoning violation. See *South Windsor v. Lanata*, 203 Conn. App. 89 (2021).

ENFORCEMENT OFFICER CAN MODIFY APPROVED PERMIT

A wetlands permit that was approved by the Commission was later modified by the wetlands enforcement officer. The permit as approved allowed for the construction of a single-family dwelling and an accessory structure as well as the creation of a yard adjacent to some wetlands.

[CONT. ON NEXT PAGE]

CONFERENCE WEBINAR

Please join us on April 21, 2021 at 3:30 pm for a webinar. The topic of discussion will focus on the many pending bills before the state legislature which negatively affect local zoning authority. An invitation to this webinar will be emailed to all members on our email list. A notice will also be posted on the Federation's website www.cfpza. We will also take time to recognize those members who received length of service awards and lifetime achievement awards.

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CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

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When the applicant wanted to add additional fill so as to create a more level yard, the WEO approved the change. An abutting neighbor appealed this decision to the Commission, which affirmed the decision. An appeal to court followed.

The court found that the WEO acted properly as Connecticut General Statute Sec. 22a-42a(c)(2) provides the Commission with the authority to delegate a decision to approve or extend an activity not within a wetland or watercourse to its duly authorized agent.

The Commission's regulations contained a provision delegating the authority and there was evidence in the record that the WEO possessed the necessary training as required by the state statute. *See Zahid v. Inland Wetlands and Watercourses Agency*, 70 Conn. L. Rptr. 245 (2020).

TIME LIMIT CAN BE PLACED ON SPECIAL PERMITS

While it is well established that a special permit, once it is recorded on the land records, 'runs with the land', can zoning regulations place a time limit on the duration of the permit? The State Appellate Court says yes.

In this case, the commission approved a special permit to construct a retail center. A condition of the approval was that the proposed use must be completed within two years of the approval. The regulations also provided

for renewal of the special permit to allow additional time for completion. When the Commission approved such a renewal application, an abutting property owner appealed claiming that the approval had expired.

The State Appellate Court's review focused on the defense raised by the special permit holder that the permit ran with the land and thus could not expire. In reaching its decision that the permit could expire, the court focused on Connecticut General Statute Sec. 8-2 which provides the Commission with the authority to attach conditions to a special permit "necessary to protect the public health, safety, convenience and property values." The Court found that this statutory language empowers a zoning authority to impose a temporal condition on a special permit such as by requiring the completion of a development attendant to the permitted use within a set time frame. *See International Investors v. Town Plan & Zoning Commission*, 202 Conn. App. 582 (2021).

FAILURE OF A COMMISSION TO ACT IS NOT APPEALABLE TO COURT

When a planning & zoning commission refused to accept a site plan application, an appeal of this action by the commission was appealed to court. The applicant argued that since the commission had failed to render a

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decision on his site plan application within the time period stated in Connecticut General Statutes Sec. 8-3(g)(1) and 8-7d, the court should find its application automatically approved. Instead, the court dismissed the appeal, stating that only a decision could be appealed and that the commission's refusal to accept the application was not a decision.

Instead, the applicant should have filed a mandamus action with the court. This action would request an order from the court that the commission approve the site plan application as required by Connecticut General Statute Sec. 8-3(g)(1) and 8-7d because it failed to make a decision within 65 days of the filing of its application. The court did add that such an order would not be awarded as a matter of right as the court has discretion to deny a request for mandamus. *See B. Metcalf Asphalt Paving Inc. v. Planning & Zoning Commission, 69 Conn. L. Rptr. 24 (2019).*

ZONING LEGISLATION CONTINUES TO ADVANCE

Numerous bills have been submitted to the State legislature which seek to drastically amend our zoning laws by reducing local control and creating State mandates. For example, S.B. 1024 – An Act Concerning Zoning Authority, Certain Design Guidelines, Qualifications of Certain Land Use

Officials and Certain Sewage Disposal Systems, would require that multi-family and single-family housing be treated the same. It would also eliminate a commission's authority to consider the character of the town and replace it with a set of state-imposed guidelines. This bill, as well as many others, will soon emerge from various committees and face a vote before the State Legislature. The Federation asks that you visit our website and also www.ct169strong.org for more information and how to take action to preserve local control over zoning.

ANNOUNCEMENTS

Workshops

At the price of \$180.00 per session for each agency attending, our workshops are an affordable way for your board to 'stay legal'. Each workshop attendee will receive a booklet which sets forth the 'basics' as well as a booklet on good governance which covers conflict of interest and how to run a meeting and a public hearing.

ABOUT THE EDITOR

Steven Byrne is a practicing attorney with an office in Farmington, Connecticut. A principle in the law firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.

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