

# Town of Berlin Zoning Regulations



Adopted: May 8, 1944

Re-Adopted by the Planning and Zoning Commission:  
February 8, 2018

With Amendments Effective To:  
September 28, 2019

- Dish antenna:* A dish-like antenna used to link communications sites together by wireless transmission of voice or data. Also called *Microwave antenna* or *Microwave dish antenna*.
- Disability glare:* The eye's line-of-sight with a direct light source, which causes a partial blindness.
- Domestic Pets:* Any of various animal species indigenous to the area that have been tamed by hundreds of years of human exposure and made fit for a human environment.
- Drainage:* The controlled removal of surface water or groundwater from land by drains, grading or other means which include runoff controls to minimize erosion and sedimentation during and after construction or development, to maximize groundwater recharge, and to prevent or alleviate flooding.
- Drive-in establishment:* An establishment which by design, physical facilities, service or packaging procedures encourages or permits customers to receive services, obtain goods, or be entertained while remaining in their motor vehicles (e.g., restaurants, car washes, banks, theaters, etc.)
- Drive-through facilities:* Any facility which by design, physical facilities, service or packaging procedures encourages or permits customers to receive service or obtain goods while remaining in their motor vehicles.
- Dustless surface:* A surface adequately covered with screening, stone, gravel, asphalt, or bituminous products or adequately treated with calcium chloride, or similar dust-inhibiting substances.
- Dwelling:* A building designed or used exclusively as living quarters for one or more families. The term shall not be deemed to include motel, hotel, rooming house or tourist home.
- Dwelling, attached:* A building containing two or more dwelling units attached to each other by continuous vertical party walls, without openings except for utilities, which walls extend from the basement or cellar to the roof.
- Dwelling, detached:* A dwelling surrounded on all sides by yards and which does not have any roof, wall or floor in common with any other dwelling unit.
- Dwelling, multifamily:* A building containing three or more dwelling units including, but not limited to, garden apartments and townhouses.
- Dwelling, two-family:* A detached building containing two dwelling units.
- Dwelling unit:* A room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used, arranged or designed to be occupied for living, sleeping, cooking and eating and including separate kitchen facilities and bathroom facilities.
- Dwelling unit, accessory:* A separate dwelling unit which is part of, and accessory to, a single-family residence.
- Dwelling unit, efficiency:* A dwelling unit consisting of not more than one habitable room together with kitchen or kitchenette and sanitary facilities.
- Earth:* Any material of which the ground is composed including, but not limited to, soil, loam, sand, gravel, rock, stone, and clay.
- Electromagnetic field (EMF):* The local electric and magnetic fields that envelop the surrounding space. The most ubiquitous source of EMF's is from the movement

conveniently. Access drives shall be properly related to the public streets so as to avoid unsafe conditions and traffic congestion.

- b. Street classification. For the purpose of providing for the development of a system of major streets and highways in the town and for the future improvement, reconstruction and necessary widening of streets and highways, each street in the town is hereby designed by one of the following street classifications:
- i. Major arterials: Berlin Turnpike Routes 5, 15), Route 72 bypass.
  - ii. Minor arterials: Chamberlain Highway, Farmington Avenue (from High Road to the Berlin-New Britain Town Line), High Road (between Gladding Place and the Berlin-New Britain Town Line), Mill Street (between the Mattabasset River and Berlin Turnpike), New Britain Road (between relocated Route 72 and the Berlin-New Britain Town Line).
  - iii. Collectors: Alling Street (between Gladding Place and Harris Street, Bacon Lane, Beckley Road, Berlin Street, Brook Street, Butler Street, Christian Lane, Deming Road, Depot Road, Edgewood Road, Episcopal Road, Farmington Avenue (with the exception of the section located between High Road and the Berlin-New Britain Town Line), Gladding Place, Glen Street, Harris Street, High Road (between Chamberlain Highway and Percival Avenue and between Glen Street and Chamberlain Highway), Hudson Streets, Kensington Road, Lincoln Street, Lower Lane, Main Street (East Berlin, Main Street Kensington), Meadow Lane, Middletown Road, Mill Street (between Berlin Turnpike and Farmington Avenue), New Britain Road (between Main Street and relocated Route 72), Norton Road, Park Drive, Percival Avenue, Porters Pass, Rowley Street, Savage Hill Road, Selden Street, Seymour Road, Southington Road, Spruce Brook Road, Tollgate Road, Webster Street, Wethersfield Road, Worthington Ridge (between Berlin Turnpike and Berlin Turnpike).
  - iv. Local Streets: All other roads in the town.

**C. Nonconforming lots, nonconforming uses of land and nonconforming structures.**

1. *Intent*. Within the zoning districts established by these regulations from its first adoption on May 8, 1944 or by amendments that may later be adopted, there exist lots, uses, and structures which were lawful at the time these regulations were adopted or amended but which would be prohibited, regulated, or restricted under the provisions of these regulations or future amendments. Such lots, uses, and structures are declared by these regulations to be nonconforming. It is the intent of these regulations to permit these nonconformities to continue until they are removed but not to encourage their survival. It is further the intent of these regulations that nonconformities shall not be enlarged upon, expanded or extended if such a change would increase

BERLIN ZONING REGULATIONS

§ IV

the nonconformity, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district. (6/27/2019)

- a. Nonconforming uses are declared by these regulations to be incompatible with permitted uses in the districts involved. After the effective date of adoption or amendment of these regulations, a nonconforming use of land, a nonconforming use of a structure, or a nonconforming use of a structure and land in combination shall not be extended or enlarged by the attachment to a building or land of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved.
  - b. To avoid undue hardship, nothing in these regulations shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of these regulations and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.
2. *Nonconforming lots.* In any residential district, a single-family dwelling and customary accessory buildings may be erected on a lot of record as of the effective date of adoption or amendment of these regulations, notwithstanding requirements imposed by other provisions of these regulations. Such lot shall be in separate ownership and shall not have continuous frontage with other lots under the same ownership. This provision shall apply even though such lot fails to meet the lot area, lot frontage and/or lot width requirements of the district in which such lot is located, provided that the yard dimensions and requirements other than those applying to lot area, lot frontage and/or lot width shall conform to the requirements of the district in which such lot is located.
  3. *Nonconforming uses.* Where a lawful use exists at the effective date of adoption or amendment of these regulations which is no longer permitted under the provisions of these regulations as enacted or amended, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:
    - a. In any residential district, no nonconforming use may be added to or enlarged unless such additions or enlargements conform to the applicable provisions of these regulations, and only if the area of all such additions or enlargements does not exceed 25 percent of the ground floor area of the building or the land use area at the time a permit is applied for unless the entire building is made to conform to the provisions of these regulations. No permit shall be granted under

## BERLIN ZONING REGULATIONS

### § IV

- this section for more than one such addition to any nonconforming building and/or land use.
- b. The commission may grant an increase in the permitted floor area to any nonconforming land use in any nonresidential district if in its judgment it were deemed that the public interest would be better served by the improvements brought about through a new site plan approval and that the increase in permitted floor area would not be detrimental to the environment or to adjacent properties and would still be adequately served by traffic circulation, parking, storm drainage and sewage disposal.
  - c. A nonconforming use shall not be moved in whole or in part to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of these regulations, unless such move has been approved by the commission.
  - d. If a nonconforming use is superseded by a permitted use, it shall thereafter conform to the requirements of the district in which it is located, and the nonconforming use shall not thereafter be resumed.
  - e. No nonconforming use may be changed except to a conforming use, or, with the approval of the Zoning Board of Appeals to another nonconforming use of the same or less objectionable character. If the intended use is specifically provided for or described in these zoning regulations then the intended use shall comply with such specific regulations.
4. *Nonconforming structures.* Where a lawful structure exists at the effective date of adoption or amendment of these regulations which could not be built under the provisions of these regulations as enacted or amended by reason of restrictions on floor area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
- a. Such nonconforming structure shall not be enlarged or altered in a manner which extends or increases the nonconformity but may be altered to decrease the nonconformity.
  - b. For all uses other than single-family homes or two-family homes, if such nonconforming structure is damaged by any means not exceeding fifty percent (50%) of its assessed value as of the latest Grand List as determined by the building inspector before such damage, it may be repaired or replaced to an extent which does not increase the nonconformity. Single-family or two-family homes may be repaired or replaced regardless of the extent of the damage. Such repair or replacement shall commence within six months after the damage or destruction occurs, and shall be completed within 18 months after commencement. If such repair or replacement is not accomplished within such time periods, the structure shall be reconstructed in conformity with the requirements of the district in which it is located, or demolished.

## BERLIN ZONING REGULATIONS

### § IV

If either single-family or two-family home is rebuilt, it shall be rebuilt on the same footprint and no greater in square footage than the original structure.

- c. If such structure is moved for any reason for any distance whatsoever, it shall thereafter conform to the requirements of the district in which it is located after it is moved, unless such move is approved by the Planning and Zoning Commission.
5. *Repairs and maintenance.*
- a. Ordinary repairs may be made or remodeling done to any structure devoted in whole or in part of a nonconforming use, provided that such work does not increase the nonconformity.
  - b. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming structure or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
6. *Uses under special permit provisions not nonconforming uses.* Any use which is permitted by special permit in a district under the provisions of these regulations shall not be deemed a nonconforming use in such district, but shall, without further action, be considered a conforming use.

BERLIN ZONING REGULATIONS

§ XI

roads, to ensure conformance with the standards applicable to special uses required by the provisions of Section XII. Failure to properly maintain all controls shall be grounds for the Commission to revoke the permit.

**S. Home occupations or professional offices for resident occupants.** One home occupation or professional office may be conducted as an accessory use in residential districts subject to compliance with the following:

1. Such use shall be conducted only by the resident occupant(s) of buildings constructed as single-family residences.
2. There shall be no more than one nonresident person employed on the premises, including partners, associates, part-time and full-time employees and independent contractors.
3. Such use shall not occupy an amount of finished floor space in excess of one-third of the total floor area of the residence building.
4. All products sold on the premises shall be made on the premises, except for the sale of items which are incidental to the provision of the permitted service, or are sold by mail order or electronic means.
5. There shall be no mechanical or structural fabrication, assembly or processing of any products or items, except that which shall be incidental to the permitted accessory use.
6. There shall be no outside storage and no display, advertising or other visible evidence of such use from the lot or building in which it is located.
7. Receipt of a certificate of zoning compliance from the ZEO.

**T. Accessory dwelling units.**

1. *Purpose.* The purpose of accessory dwelling units is to increase the supply of rental housing units; to provide for more flexible use of the existing housing stock; and to encourage household life cycles to correspond more closely with neighborhood life cycles, thereby promoting neighborhood stability.
2. *Applicability.* An owner of a single-family dwelling unit which is more than five years in age, is served by public water and sanitary sewers or is served by a well and/or septic system that is capable of serving the proposed additional unit as determined by the health director and is located in the MR-1, R-86, R-43, R-21 and R-15 zoning districts may established an accessory dwelling unit within the principal structure, subject to a special permit from the Commission and the following conditions.
  - a. The owner of the property shall reside on the premises.
  - b. The occupancy of the accessory dwelling unit shall not exceed two persons, and shall be limited to persons of at least 55 years of age. The age restriction shall be waived if the owner files a covenant in the land records which states that the accessory unit shall not be rented at a cost which exceeds 30 percent of 80 percent of the area median income for a two person family as determined by the U.S. Department of Housing and Urban Development. The costs of the housing shall be determined in accordance with Section V.A.9.

BERLIN ZONING REGULATIONS

§ XI

- c. An accessory dwelling unit may be created only through internal conversion of the principal structure. However, minor additions may be made to the building if the square footage added constitutes no more than 150 square feet. In no case may exterior stairs be added to the structure.
  - d. Additional entrances resulting from the creation of an accessory dwelling unit shall not face the same side of the lot as the existing entrance to the principal dwelling.
  - e. Where garage space is converted to living space, garage doors shall be replaced with materials consistent with the exterior of the rest of the house, and the driveway immediately adjacent to the former garage door shall be modified so as to eliminate the appearance of a drive leading to a solid wall.
  - f. Smoke detectors shall be installed in both the principal and accessory dwelling units. Installation is to be verified by the fire marshal prior to the issuance of a certificate of occupancy.
  - g. The applicant shall provide off-street parking spaces for each dwelling unit in accordance with Section IX.B.
  - h. Applications for special permit shall be made (to) the Commission on forms provided in the office of the town planner. The application shall include copies of a plot plan showing the location of the dwelling and any proposed expansion, the proposed floor plan, existing and proposed off-street parking, the location of existing and proposed entrances, a list of all abutting property owners, and an application fee as required by the town fee schedule.
  - i. The accessory apartment shall be a minimum of 400 square feet in area, but not more than 700 square feet in area. The area of the principal dwelling shall not be reduced to less than 900 square feet.
  - j. After receipt of the application, all abutting property owners shall be notified by the applicant by certificate of mailing, time and place of the public hearing.
  - k. Special permits for accessory apartments shall become void if construction has not started within one year of issuance.
  - l. The owner of each structure shall submit by January 31 of each year, certification on a form provided by the ZEO that they continue to live in one of the units. Failure to submit certification or misrepresent their occupancy will result in forfeiture of the special permit.
- U. **Garden supply centers.** Garden supply centers shall be permitted in residential zones on the following state highways; Route 5 and 15, Route 160 east of Routes 5 and 15, Route 364 and Route 71; subject to site plan and special permit approvals by the commission, in accordance with Sections XII and XIII and the following conditions:
- 1. There shall be no adverse impact on the neighborhood.
  - 2. All lot and bulk requirements of the R-43 zone shall be applicable.



## SECTION XV. ZONING BOARD OF APPEALS

- A. **Powers and duties.** The Zoning Board of Appeals (ZBA) shall have all the powers and duties prescribed by Connecticut General Statutes §8 chapter 124 and by Connecticut General Statutes §14 Chapter 250, and by these regulations, which powers and duties are summarized and more particularly specified below. None of the following provisions shall be deemed to limit any of the authority of the ZBA that is conferred by general law.
1. *Appeals.* The ZBA shall have the authority to hear and decide upon any appeal where it is alleged that there is an error in the order, requirements, decision or determination of the ZEO. No question of hardship shall be involved in such an appeal, and the action of the ZBA thereon shall be limited to the question of whether or not, and to what extent such order, requirement, decision, or determination was a correct interpretation of the subject provision of these regulations.
  2. *Variances.* The ZBA shall have the authority to vary or adjust the strict application of these regulations in only those cases where the unusual size, shape or topography of a lot or other unusual physical conditions pertaining to it or to any building situated thereon make it impossible to strictly apply a specific provision of these regulations to such lot without resulting in exceptional difficulty or unusual hardship, so that substantial justice shall be done and the public health, safety and welfare secured.
  3. *Location of motor vehicle uses.* The ZBA shall have the authority to hear and decide upon all requests for certificates of approval for motor vehicle sales, services and repair uses in accordance with the Connecticut General Statutes. Such authority shall not supersede the Commission's authority to hear and decide upon requests for special permits for such uses.
  4. *Use variances.*
    - a. No use variance shall be granted by the ZBA which would permit:
      - i. A use prohibited either implicitly or explicitly by these regulations.
      - ii. The expansion of a nonconforming use;
      - iii. The number of dwelling units on a lot to exceed the maximum allowed in the zone in which the lot is located; or
      - iv. A use otherwise allowed by special permit in the zone in which the use is located.
    - b. Use variances may be granted by the ZBA only in the GI and PI zones and only if there is no other reasonable use of the land.
    - c. [Deleted]. (6/27/2019)
- B. **General rules.**
1. *Appeals.* All appeals to the ZBA from an order, requirement, decision or determination of the ZEO shall be taken within 15 days of such action by the ZEO. Appeals shall be made in writing on a form prescribed by the ZBA and shall be accompanied by a filing fee to cover the cost of processing the appeal. Appeals shall fully set forth the circumstances of the case. Appeals shall refer

to the specific provisions of the regulations involved, and shall exactly set forth as the case may be, the interpretation that is claimed, the details of the adjustment that is applied for, and the grounds for which it is claimed that the same should be granted. (6/27/2019)

2. *Application.* All applications for variances shall be submitted in writing in a form prescribed by the ZBA. The ZBA may deny an application for incomplete information having been submitted.
3. *Referrals.* To assist with its consideration of an appeal or application, the ZBA may refer such appeal or application to any department, agency or official it deems appropriate, to review and comment upon those technical matters which are the concern or responsibility of such department, agency or official.
4. *Public hearing.* The ZBA shall hold a public hearing on all appeals and applications for variances, shall decide thereon, and shall give notice of its decision in accordance with the provisions of the Connecticut General Statutes.
5. *Variance.* No variance shall be granted by the ZBA unless it finds:
  - a. That there are special circumstances or conditions, fully described in the findings of the ZBA, applying to the lot or structure for which the variance is sought, which are peculiar to such lot or structure and do not apply generally to lots or structures in the neighborhood and which have not resulted from any willful act of the applicant subsequent to the date of adoption of the regulation from which the variance is sought, whether in violation of the provisions herein or not;
  - b. That, for reasons fully set forth in the findings of the ZBA, the aforesaid circumstances or conditions are such that the particular application of the provisions of these regulations would deprive the applicant of the reasonable use of the lot or structure, that the granting of the variance is necessary for the reasonable use of the lot or structure, and that the variance as granted by the ZBA is the minimum adjustment necessary to accomplish this purpose;
  - c. That the granting of the variance shall be in harmony with the general purposes, and intent of these regulations and the town's Plan of Conservation and Development and shall not be injurious to the neighborhood or otherwise detrimental to the public health, safety and welfare; and
  - d. That the granting of the variance is not based upon the nonconformity of neighboring lots, uses, buildings or structures, nor upon a financial or economic hardship.
6. Whenever the ZBA grants a variance, it shall include in its minutes as part of the record the reason for its decision, the specific provision of these regulations which was varied, the extent of the variance and the specific hardship upon which its decision was based.
7. In exercising any of its authority, the ZBA may attach any conditions and safeguards as may be required to protect the public health, safety and general welfare, and to ensure ongoing compliance with these regulations. Violation

BERLIN ZONING REGULATIONS

§ XV

of such conditions and safeguards shall be deemed to be a violation of these regulations.

8. Any variance granted by the ZBA shall become effective upon its filing by the applicant in the office of the town clerk and in the town's land records.
9. Any variance granted by the ZBA which is not recorded within one year from its effective date shall be null and void.
10. If the ZBA denies a variance, it shall not be required to hear an application for the same variance or substantially the same variance for a period of six months after the date of denial, unless the circumstances associated with the application have substantially changed. A change in ownership of property or any interests therein shall not be deemed a substantial change.
11. No appeal or variance shall be granted that could alter, revise or otherwise change any of the conditions attached to the granting of a special permit by the Commission, if such conditions are more restrictive than otherwise provided for in these regulations or if such conditions do not refer to specified standards in these regulations.
12. *Posting of property.* The posting of signage for notice of a public hearing on a property shall be in accordance with Section XIV.F. *Posting of property.* (7/15/2018)
13. *Notification to property owners.* Notification shall be sent to property owners in accordance with Section XIV.G. *Notification to property owners.* (7/15/2018)
14. *Technical and Legal Assistance.* The Town of Berlin Zoning Board of Appeals may require additional assistance (including but not limited to Engineering and Legal assistance) in evaluating an application submitted in accordance with the regulations if it finds that the nature and intensity of development may have a significant impact on the site and its surrounding areas and that Town staff will not be able to complete its review of an application in the time period prescribed by Connecticut General Statutes. The expense of the additional assistance shall be estimated by the Zoning Board of Appeals, based on a preliminary estimate prepared by a qualified party or expert, and the estimated cost of reviewing the application times one hundred-fifty percent (150%) shall be paid by the applicant and deposited with the Board or its designated agent. Such deposit shall be made prior to review of the application and/or submission.

Upon completion of the review and final action by the Zoning Board of Appeals on the application, the Town shall determine the costs incurred for the review and refund the excess monies to the applicant. Applicants shall not be responsible for costs incurred for assistance which exceed one hundred-fifty percent (150%) of the Board's estimate.