

Memorandum

2/09/21

To: Westtown Township Planning Commission

From: John D. Snook

Re: Storage Regulations

Chapter 170, Zoning, Article XV, §170-1509, Outdoor Storage

Storage is one of the issues on your list of potential amendments, but with only the note that it needs to specifically deal with residential properties, presumably as different from non-residential properties. We discussed this further at your meeting on 1/19/21 and again on 2/03/21; the following draft text is aimed at resolving our most recent discussions. Text shown in track changes prior to our 2/03/21 meeting is now "accepted," with new changes indicated in track changes.

Definitions:

There do not appear to be any current pertinent definitions other than "Junkyard."

ACCESSORY STORAGE STRUCTURES

Permitted Accessory Structures, including non-inhabitable structures such as freezers, may be used for Indoor Storage as an Accessory Use. Indoor Storage structures or units comprising a principal use, including Self-Storage Units or Structures shall be regulated as a commercial use. Temporary accessory storage structures including, for example, "pods," even while enclosed, shall be regulated as Outdoor Storage.

FUEL

Any material, as coal, oil, gas, wood, etc., burned to supply heat or power.

HAZARDOUS SUBSTANCES

Hazardous Substances means:

A. Those substances listed in, defined in or regulated as hazardous, toxic, pollutants, contaminants or harmful to human health or the environment under any Environmental Law, including the following U.S. federal statutes and their Pennsylvania counterparts, as each may be amended from time to time, and all regulations thereunder: the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Toxic Substances Control Act ("TSCA"), the Clean Water Act ("CWA"), the Safe Drinking

Water Act, the Atomic Energy Act and the Clean Air Act (“CAA”); the Solid Waste Management Act, (35 P.S. §§ 6018.101 – 6018.1003), the Clean Streams Law (“CSL”) (35 P. S. §§ 691.1-691.1001), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101-4000.1904), the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101-6020.1305), the Low-Level Radioactive Waste Disposal Act (35 P. S. §§ 7130.101-7130.905), the act of July 13, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1-6019.6), known as the Infectious and Chemotherapeutic Waste Disposal Law, the Air Pollution Control Act (35 P. S. §§ 4001-4015), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1-1396.19b), the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301- 3326), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1-693.27), and any other State or Federal statutes or applicable rules and regulations relating to environmental protection or the protection of public health; and

- B. Petroleum and petroleum products, including crude oil and any fractions thereof; and
- C. Polychlorinated biphenyls, mold, methane, asbestos; and
- D. Any substances or materials that:
 - (1) Are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants or toxic substances under any Environmental Law;
 - (2) Are defined by any applicable environmental law as toxic, explosive, corrosive, ignitable, infectious, radioactive, mutagenic or otherwise hazardous;
 - (3) The presence of which require investigation or response under any applicable environmental law;
 - (4) Constitute a nuisance, trespass or health or safety hazard to Persons or neighboring properties;
 - (5) Consist of underground or aboveground storage tanks, whether empty, filled or partially filled with any hazardous substance; or
 - (6) Contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or wastes, crude oil, nuclear fuel, natural gas or synthetic gas.

HAZARDOUS WASTE

Hazardous Waste means any materials defined as hazardous wastes under the Pa. Solid Waste Management Act, 35 P.S. §§ 6018.101, et seq., or any other applicable federal or state statute and any applicable rules and regulations, including but not limited to, garbage, refuse or sludge from an industrial or other waste water treatment plant; sludge from a water supply treatment plant or air pollution control facility; any waste resulting from removal of, demolition of, modifications of or additions to part or all of any existing structure, facility or equipment; and any other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from municipal, commercial, industrial, institutional, mining, or agricultural operations, and from community activities; or a combination of the above, which because of its quantity, concentration or physical, chemical or infectious characteristics may do one of the following:

- A. Cause or significantly contribute to an increase in mortality or increase in morbidity in either an individual or the total population; or
- B. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Hazardous Waste does not include organic solid waste nor garbage not meeting this definition, nor solid or dissolved material in domestic sewage, nor solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341), nor source of or special nuclear or byproduct material as defined and regulated by the Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011 - 2284).

Mila Robinson has noted that Chapter 140, Solid Waste, includes a simplified definition for Hazardous Waste (below) which arguably includes the details above by reference. The Planning Commission will need to consider whether or not to include the more detailed definition above and, if so, whether the Chapter 140 definition should be revised for consistency:

HAZARDOUS WASTE

Any waste which consists in any part of a chemical, compound, mixture, substance or article designated by a federal agency, including the United States Environmental Protection Agency, commonwealth, county or township agency to be "hazardous," "toxic" or "dangerous," as those terms are defined by or pursuant to federal, state, county or local law.

INDOOR STORAGE

Storage entirely ~~indoors~~ enclosed within a permitted structure, except for temporary storage units such as "pods" shall be considered an accessory use. Where Indoor Storage is a principal use, as in a wholesale sales, storage, or

distribution facility, or self storage units, it shall be regulated as a commercial use.

JUNKYARD - See notes below.

OUTDOOR STORAGE

Outdoor storage of products, materials, equipment, machinery, or supplies other than those accessory to a permitted agricultural use or timber harvesting operation shall be regulated pursuant to §170-1509, Outdoor Storage,

Commented [JS1]: Do we need an additional definition for underground storage, or do we consider that a form of outdoor storage?

SELF STORAGE UNITS OR STRUCTURES

Self Storage Units or Structures are Indoor Storage facilities, whether one or more in a single structure, or single, or multi-story, or with or without individual outside access, usually made available for rent to individuals and are regulated as a principal commercial use where permitted. This includes "high-cube warehousing" available to individual renters.

Commented [JS2]: As written, these would be permitted wherever commercial uses are permitted. If you would like to reduce the potential opportunities, we will need to list this use individually in specific districts.

We noted the need for a definition of vehicle. The problem is that an inclusive definition of vehicle, as below, includes small vehicles such as bicycles, canoes, kayaks, and baby carriages. Other definitions focus on motor vehicles, but trailers are not motorized and boats may not be motorized.

VEHICLE

Something used as an instrument of conveyance. It can include any conveyance used for transporting passengers or things by land, water, or air.

WAREHOUSING

The temporary storage of goods and materials within a building, generally for subsequent distribution to other locations and not involving retail activities.

Commented [JS3]: Mila Robinson reminds us of this existing definition; should this definition be cross-referenced to this section?

§170-1509, Outdoor Storage

A. General Requirements

1. There shall be no storage of Hazardous Waste as defined in § 170-201 anywhere within the Township, including temporary storage in a parked vehicle. Hazardous waste shall be as defined in Pa. Act 97-1980, the Solid Waste Management Act (35 P.S. § 6018.101 et seq.), or any subsequent amendment or revision thereto.
2. There shall be no storage of Hazardous Substances as defined in § 170-201 anywhere within the Township, except where permitted subject to state or federal regulation or as otherwise provided herein.

~~2-3.~~ No highly flammable or explosive liquids, solids, or gases shall be stored in bulk above ground or below ground, except the following, where permitted in accordance with applicable state or federal regulation and in accordance with Chapter 87 of the Township Code, Fire Prevention, ~~and~~ where, in the case of above ground storage, are enclosed within an approved safety fence, compatible with the architectural and landscaping style employed on the lot. Permitted liquid storage tanks shall be enclosed by a moat or berm to contain potential spillage.

- a. Tanks or drums of fuel connected directly with and located and operated on the same lot as the devices or appliances they serve.
- b. Tanks or drums for storage of not more than three hundred (300) gallons of fuel, provided such tanks are located no closer than twenty-five (25) feet to any lot line.

~~3-4.~~ Outdoor storage, for periods in excess of 30 days except where linked to an activity (e.g., construction, etc.) with a specifically defined building permit duration, or as otherwise provided herein, of products, materials, equipment, machinery, or supplies other than those accessory to a permitted agricultural use or active timber harvesting operation, or solid waste not included in the definition of Hazardous Waste in § 170-201, shall be screened from view of public rights-of-way and adjacent residential uses or zoning districts. Screen landscaping shall be in accordance with § 170-1507.

~~4-5.~~ All organic refuse or garbage permitted shall be stored in tight, vermin-proof containers. In multiple family, commercial and industrial developments, solid waste storage shall be centralized to expedite collection and enclosed on three (3) sides by masonry walls or opaque fencing.

~~5-6.~~ No storage and no materials or wastes shall be deposited upon a lot or allowed to accumulate in such form or manner where not in compliance with the Pa. Clean Streams Law, 35 P.S. §§ 691, et seq., the Pa. Solid Waste Management Act, 35 P.S. §§ 6018.101, et seq., the Pa. Air Pollution Control Act, 35 P.S. §§ 4000, et seq., and any other applicable local, state or federal law, and any applicable rules and regulations.

~~6-7.~~ No storage shall be permitted which constitutes disposal under applicable local, state or federal law.

~~7-8.~~ No vehicles, including trailers, without current license plates and/or registration, shall be stored outside on any lot.

Commented [JS4]: This exception should cover propane tanks which are connected directly to the devices they serve.

Commented [JS5]: The Township permits temporary holding/retaining tanks when there are issues with septic systems. Will those fall under the storage regulations? Sometimes they can be above ground, 1,500-2,500 gallons. How do we rectify this or do we need to since such storage is not fuel? Should such large storage tanks otherwise be specifically dealt with here?

Commented [JS6]: Is it accurate to infer that this provision is intended only to apply to tanks or drums NOT connected directly to the devices they are serving? If so, should that be clarified? As written, the 25-foot provision would apply to small tanks not directly connected to a device, such as small propane tanks (for a grill for example), not currently in use. We should probably create a threshold for which this does not apply at all?

Commented [JS7]: We have not followed up with the fire chief regarding the potential explosion radius as previously discussed. Yet the reasonable setbacks we are talking about would not be likely to accommodate an adequate radius for a true explosion. What are your thoughts?

Commented [JS8]: Should this be reduced to say 7 days or otherwise set at a different period?

Commented [JS9]: See provisions for pods, dumpsters, etc. under residential storage

Commented [JS10]: This section may need to be revised to reference the situations in this new section.

~~8-9.~~ No storage which threatens or causes release of polluting substances or materials, contaminants, hazardous substances, etc. into the environment; or otherwise causes pollution.

~~9-10.~~ No outdoor storage shall be permitted of human or animal remains, etc.

~~10-11.~~ No storage shall be permitted within access rights-of-way, or on drainage areas, culverts, stormwater management structures, floodways or other environmentally sensitive areas.

~~11-12.~~ No storage is permitted if the storage is likely to cause, or causes, a nuisance, or otherwise threatens to adversely affect public health, safety and welfare.

B. Residential Outdoor Storage

All outdoor storage on residential lots shall comply with the general standards above and the following:

1. Recreational Vehicles.

a. Not more than one recreational vehicle, including travel trailers and water craft, shall be parked or stored on any residential property, except in a carport or enclosed building or to the rear of the rear-most wall of the dwelling where screened from view from any public road or neighboring residential property, provided, however, that such equipment may be parked anywhere on residential premises for a period not to exceed forty-eight (48) hours.

Commented [JS11]: Should one recreational vehicle be allowed in the driveway?

b. No such equipment shall be used for dwelling purposes on a residential lot for more than seven days per quarter.

2. Temporary accessory storage units structures including, for example, "pods" or dumpsters may be permitted in the front yard or driveway for not more than 60 days, except where linked to an activity (e.g., construction, etc.) with a specifically defined building permit duration.

3. Except as provided in subsections 170-1509.B.1 and 2 above, no storage shall be permitted within the front yard of any residential lot. In the case of a reverse-frontage or corner lot where more than one yard is considered a front yard, storage may be permitted beyond the minimum front yard setback in no more than one such front yard, where screened from view of public rights-of-way and adjacent residential uses or residential zoning districts.

4. Outdoor storage of construction equipment or materials, where not required for on-site construction pursuant to a valid construction permit or for normal property maintenance, shall not be permitted.
5. Appliances and household furniture that are not designated for exterior use are prohibited in front yards, open front porches, and open carports.

Commented [JS12]: This seems to me to reach a bit too far, given all the front yard provisions and screening provisions.

C. Non-Residential Outdoor Storage

For all non-residential uses, storage of materials, equipment or vehicles, but not including parking and similar activities, shall be carried on within a building, except that outdoor storage for a permitted agricultural, timber harvesting, industrial or commercial use may be authorized where the general standards above are complied with and all of the following conditions are met:

1. The agricultural, industrial or commercial use involved traditionally employs long-term outdoor storage of materials or products (e.g., lumber yard).
2. Such storage is needed for the successful operation of the use, and the proposed site is suitable for outdoor storage.
3. The applicant can demonstrate that indoor storage is not practical.
4. No merchandise, goods, articles, or equipment shall be stored, displayed, or offered for sale outside any building except seasonal articles which are too large or otherwise infeasible to be stored indoors. Such articles shall be stored adjacent to the principal building housing the commercial use, and shall be enclosed by either walls or opaque fencing designed to be architecturally compatible with the building. Such enclosure shall be at least six feet high. Any outdoor display area shall be considered sales floor area for purposes of computing building coverage and parking requirements.
5. The materials stored shall not exceed eight (8) feet in height and the storage area shall comply with setback and impervious coverage requirements, measured as if the storage area, when full up to eight (8) feet in height, were an accessory structure.
6. The storage shall comply with any applicable condition of a prior plan approval.
7. Except where otherwise specifically permitted, including seasonal displays and shopping cart storage, all storage areas shall be located to the side or rear of the property behind the front building line of any principal structure.

8. Any establishment which furnishes shopping carts as an adjunct to shopping shall provide definite areas within the building and parking area for storage of said carts. Each designated storage area shall be enclosed by a barrier at least six (6) inches higher than the parking area surface, and shall be clearly marked for storage of shopping carts. All shopping carts shall be stored indoors, or otherwise secured during non-operating hours.

Where should Self-Storage Units or Structures be provided for? We have defined them as a commercial use. The C-2 District would be logical although there is essentially no land left, except via redevelopment.

New Notes regarding Junkyards:

As discussed before, Junkyard is a defined term and two or more junked vehicles is defined as a junkyard, but there are no provisions for junkyard otherwise in the Zoning Ordinance. Would a junkyard be permitted as "outdoor storage" if it arguably could meet the terms of this section? I doubt that would be your intent. It is odd to define "Junkyard" but not provide for it nor specifically exclude it, as defining the term infers recognition of it as a valid use. Obviously, we can prohibit junkyards in residential zoning districts. Yet, there is no adequate land left in the C-1 or C-2 districts. There is a "catch all" provision for uses not otherwise provided for in the M-U District, but not in any other district, where approved as a special exception. § 170-1001.B(2) reads as follows:

Any other lawful use not provided for in this article, so long as it is consistent with the health, morals, and general welfare of the Township and subject to the applicable area and bulk regulations of § 170-802 of this chapter and the applicable design standards of Article XV of this chapter, and subject further to other supplemental regulations and provisions of this chapter, where applicable.

The only open land in the M-U District, aside from that being utilized for the Sawmill Court development, comprises remnants of woodland on constrained land next to the swim club and next to Goose Creek at Wild Goose Farm. I am not sure where you might provide for it nor what degree or risk of zoning challenge there is to keeping the status quo. It certainly is unlikely to be an attractive economic use anywhere in the Township, in the face of a very strong real estate market.

The current definition in § 170-201 reads as follows:

JUNKYARD

An area of land, with or without buildings, which is used for the storage, outside a completely enclosed building, of used and discarded materials, including but not limited to: waste paper, rags, metal, building materials, house furnishings, machinery, vehicles, or parts thereof, with or without the dismantling, processing, salvage, sale, or other use or disposition of the same. The deposit or storage on a

lot of two or more unlicensed, wrecked, or disabled vehicles, or the major parts thereof, shall be deemed a junkyard.

If specifically provided, or if left in the "catch-all," you probably should include standards for Junkyard in Article 16 of the Zoning Ordinance, Supplemental Regulations; I provide a sample below, which, frankly, serves to indicate how reasonable limitations would be impossible to meet in Westtown:

16xx Junkyard or Salvage Yard.

A junkyard or salvage yard operation shall comply with the following standards:

- A. The tract serving as a junkyard shall contain a minimum of ten (10) contiguous acres undivided by streets, streams, or rights-of-way, other than those for public utilities. No part of the operation shall be located within any identified floodplain area or located such that contaminants from the operation can seep or flow into a stream or other body of water.
- B. The tract serving as a junkyard shall be located on lands with less than fifteen (15) percent slope.
- C. The maximum lot coverage including parking, storage, buildings, other structures, and any other impervious surface shall not exceed fifty (50) percent.
- D. The junkyard operation including all storage shall be set back a minimum one hundred (100) feet from any abutting residential use or residential zoning district. Otherwise all applicable zoning district yard area setbacks shall apply.
- E. The perimeter of the junkyard operation including all storage shall be enclosed by a fence at least ten (10) feet in height. The fence shall be opaque except where an effective and complete visual landscape screen is maintained on the outside of the fence. Screening shall be required along any part of the perimeter abutting a residential use or residential zoning district or the Delaware River Valley Scenic Byway.
- F. All vehicles associated with the operation of the junkyard shall be parked within the fenced enclosure.
- G. No garbage or other waste, and no paper, rubbish, rags or other flammable articles or materials shall be stored on the premises for longer than one week.
- H. The manner of storage and arrangement of junk, and the drainage facilities of the premises shall be such as to avoid the accumulation of stagnant water upon the premises. Outdoor storage shall be conducted to control mosquito propagation during warm weather to the extent practicable.

- I. All junk kept, stored, or arranged on the premises shall at all times be kept, stored and arranged within the junkyard in a neat and orderly manner in keeping with the standards of the trade. Storage piles shall not exceed ten (10) feet in height.
- J. There shall be provided at least a fourteen (14) foot wide accessway which shall be clear and free at all times to provide for access to all parts of the premises for firefighting and other safety or emergency purposes. No portion of the premises shall be more than twenty-five (25) feet from such an accessway.
- K. No burning shall be permitted on the premises. Any junkyard shall have available in proper working condition, equipment that will control, contain, and suppress fires or other hazards.
- L. Waste generated by the salvage or junkyard operation shall be managed in accordance with all applicable regulations. Except as provided hereunder, no storage of explosive, radioactive, toxic, highly flammable or otherwise hazardous materials shall be permitted.
 - 1. Automotive fluids (including gasoline, oil, antifreeze, brake, transmission fluids, and similar fluids), freon, and other flammable or toxic substances shall be removed from any junk or other items stored on the premises and shall be properly containerized and stored. Such materials shall not be released into the air or deposited on or into the ground or watercourses and shall be either used, transported and disposed of, or recycled in accordance with applicable regulations.
 - 2. Automotive batteries shall be removed from junked vehicles and properly stored until they are either used, disposed of, or recycled.
 - 3. Removal of such fluids, batteries, and other hazardous materials shall take place on an impervious surface where they can be properly contained without danger of spilling or being transported into the ground.
- M. Where whole or processed tires are stored outdoors, each waste tire pile shall meet the following requirements:
 - 1. Individual tire storage piles shall not cover a surface area of greater than one-thousand (1,000) square feet.
 - 2. Firebreak corridors of at least fifty (50) feet in width shall be maintained on all sides of tire piles. No point in the pile shall be more than twenty-five (25) feet from a firebreak. Firebreaks may include accessways and shall be kept free from obstructions that could limit access in the event of an

emergency. Vegetation within the firebreak corridor shall be maintained below six (6) inches in height.

N. Any activity or operation within the junkyard likely to generate significant noise or vibration, including but not limited to the crushing of vehicles or other material, shall be limited to the hours of 7:00 a.m to 5:00 p.m.