



# TOWN OF NEWINGTON

200 Garfield Street Newington, Connecticut 06111

## Town Planner

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Town Planner

### Memorandum

**To:** TPZ Commission

**From:** Planning Staff

**Date:** 3/21/24 Update

**Re:** Partial site plan acceptance and bonding request for 3313-3333 Berlin Turnpike (Meadow Commons – commercial)

Partial site plan acceptance and bonding request for 96-100 Pane Road (Residences at Newington - residential)

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**3-21-24 UPDATE:** Staff received an updated phasing plan for the request from Criterion for 96-100 Pane Road (Residences at Newington - residential) project that is included in the packet. The updated plan shows proposed access from Pane Road for the residential portion of the property. There have been no changes to the phasing plan for the commercial property as the remaining issue with the commercial site is the OSTA approval. Staff has not received any updates from the commercial developer regarding OSTA approval for the temporary right-in right-out configuration.

Criterion has noted the following highlights regarding the proposed phasing plan:

1. Residents, and the Meadow Commons Commercial users will use Pane road for exit and entrance.
2. Contractor will limit construction deliveries between 8am and 2pm.
3. Construction deliveries will have a contractor coordinating and providing access safely through the site.
4. Jersey barriers will be located at the corner of building 2 to highlight the intersection. The fencing has been pulled back at the corner to provide better sight lines.
5. A temporary fence has been added at the temporary fire lane to prevent non-construction travel in that direction.

**Bond:** The developers for both projects have submitted draft letters of credit that are under review. The commercial developer has also submitted a potential bond reduction on 3/19/24 showing a minor reduction from \$779,254 to \$704,303 that has not yet been reviewed by the Town Engineer. There has been no change in the estimated bond for the residential development to date.

Staff will be visiting the site early next week prior to the meeting to complete review of the phasing plan and site progress. One initial comment that has been shared with Criterion is a

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question regarding how traffic will be directed to the Pane Road access and not to the Berlin Turnpike entrance that, at this time, has not received OSTA approval for the temporary right-in right-out configuration.

**Previous Staff report Below (not updated):**

The developers are seeking Commission approval, pursuant to section 5.3.5 of the regulations, to post a bond for the balance of unfinished site work in order to obtain partial C/O's for 3 of the commercial businesses and 1 apartment building at the aforementioned properties. While these requests are for different properties, they were approved under a single site plan and the request for 96-100 Pane Road is proposing sole access for residential tenants through the commercial site as part of their partial site plan acceptance. Staff anticipates that the developers will want to make one presentation that includes both properties.

The developers have submitted separate phasing plans, as-builts showing current completed improvements, and estimate of remaining work to be bonded. Both bond estimates and partial as-built maps have been submitted to the Town Engineer for his review.

The two properties under development are at different stages of completion and additional items need to be addressed prior to staff's recommendation for a partial acceptance. The commercial portion appears to be more complete with limited areas under construction, such as those behind buildings A through D. The residential portion of the development has a more significant amount of work to complete with some remaining work around building 1 and more significant work around and including buildings 2 and 3.

The developers are seeking input from the TPZ regarding their request for partial site acceptance. Staff recommends that the TPZ provide their input on the proposed phasing of their plans, completeness required for partial acceptance, and input regarding the form of the bonding proposed by the developers. The developer will likely be requesting to utilize a letter of credit for their surety. Letters of credit are a permitted bond type per the Newington Zoning Regulations, provided that they are in an acceptable form and the financial institution or other entity issuing any letter of credit being found acceptable (Connecticut General Statutes Chapter 124 Zoning, Section 8-3(g)(2)).

**3313-3333 Berlin Turnpike (Meadow Commons – commercial)**

Bond estimate from developer: \$779,254 (Total \$2,182,262 including offsite improvements and \$779, 254 stated in an email and under review)

To date, the following onsite work has been performed as follows; the installation of the underground drainage system, other underground utilities such as water, sewer, electrical, and gas, the pavement binder course with the exception of the area behind building C has been installed, the majority of curbing has been installed, sidewalks and site lighting have been installed. A final pavement course has been installed in a portion of the site as indicated on the as-built and phasing plan. It is anticipated that the final pavement top course will be installed in April once the asphalt plants reopen in the spring.

Staff has comments on the following items:

- reviewing areas for tripping hazards,
- the incorporation of exclusionary fencing in areas still under construction,
- the establishment of pavement markings for building proposed to have partial C/O's,
- and the establishment of the traffic pattern for the entrance to the Berlin Turnpike.

The applicant has requested an interim approval for a right-in/right-out traffic pattern from the CTDOT Office of the State Traffic Administration (OSTA). The plans were approved with a signalized intersection. The OSTA approval has not been granted to date for the interim condition and the developer will provide additional information at the meeting. The OSTA approval, along with a letter from OSTA to the Building Official stating that C/O's may be issued by the Town is required prior to the issuance of any site C/O's.

Staff requested a copy of any bonding for offsite improvement within the DOT right of way and the applicant provided a copy of a surety permit bond for \$3,030,000 on 2/22. Staff will review this document and provide the developer with any follow up questions.

#### **96-100 Pane Road (Residences at Newington - residential)**

Bond estimate from developer: \$1,703,763

To date the following onsite work has been performed as follows; the installation of the above ground detention pond (not shown on the as-built), the installation of drainage pipe as shown on the as-built, other underground utilities (water, sewer, electrical), some areas of sidewalks, and a pavement binder course in the areas indicated on the as-built. The developer has indicated phases of binder pavement but has not indicated the date of final pavement.

Staff has comments on the following items:

- Site lighting fixtures are not installed (required before acceptance),
- Some sidewalks still need to be completed around the building,
- The general site condition around the building: Areas adjacent to sidewalks, patios, and the traveled way should be leveled to grade, and no tripping hazards should be present,
- Pavement markings need to be completed, primarily in the area in front of the building,
- If the TPZ allows partial acceptance with only the binder course, the traveled way will need to be assessed for shimming,
- To utilize the entrance to the Berlin Turnpike, the traffic pattern and lane striping will need to be established,
- Building exteriors, including the garages, should be complete, and general site cleanup performed.

Additional comments may be added after the review of the as-built and bond estimate. Due to available staff time and receipt of the as-built by the Town on 2/16, review of the as-built will likely not be available by the time of the meeting. Without a review of the as-built, and with the remaining work on the site as inspected on 2/22, staff can not recommend partial acceptance at the time of this report. Staff met with the applicant on 2/23 and the understanding is that the project is not ready for partial acceptance, however the applicant would like to discuss the level of completion required for partial acceptance and the form of the bond.

### **Staff Recommendation:**

The TPZ should review the documentation provided in the packet and the comments provided by staff. If the TPZ hears the developer's requests, staff recommends that the TPZ provide the developers with feedback regarding the level of completeness required for their developments to receive a partial site acceptance. While staff understands the developer's desire to open portions of their sites that have completed their fit outs and are ready for occupancy, consideration of both the safety of the site to operate under the partial or phased conditions and the remaining work required for the balance of the site and level and method of bonding is required. The Commission may act separately on each request for partial acceptance.

In addition, a fully executed OSTA certificate and letter to the Building Official is required before any Certificate of Occupancy is issued for the site. The Commission may discuss this requirement and its impact to the Commission taking action on this request.

With the remaining staff comments, and additional comments that may be provided at the meeting, the Commission may choose to hear the presentations, provide feedback to the developers, and table either one or both of the requests until a later meeting for staff and Commission comments to be addressed for consideration of approval or denial. The Commission may also take other actions (approval or denial) based on the presentation, information provided, and subsequent discussion.

**Staff has provided the following sections from the Newington Zoning Regulations and Connecticut General Statutes regarding the process for bonding the incomplete site work with emphasis added and commentary below each section. Staff recommends that the TPZ review Sections 5.3.5, 5.3.6 and 7.3 of the Newington Zoning Regulations for the complete bonding procedures.**

#### **5.3.5 Improvements**

Street improvements, drainage, sewer and water supply, landscaping, recreation areas, parking and loading facilities and any other improvements required by the Commission shall be installed according to the specifications of the Town of Newington before final acceptance is given and a Certificate of Occupancy is issued. **The developer, with the approval of the Commission, may install improvements in a portion of the plan and receive final acceptance of that portion only. Any unfinished portion of the site plan shall be bonded prior to the issuance of a Certificate of Occupancy and Certificate of Zoning Compliance.** Improvements related to the safe use of the site, such as but not limited to, lighting, fire lanes, and fire hydrants, shall be completed and will not be bonded.

The developers have also provided a map of the intended phasing of the project for your review. If the Commission grants partial acceptance of the site to allow the posting of a bond, the applicant can continue the process of posting the bond through the Town Manager's Office outlined in section 7.3.1 of the Newington Zoning Regulations.

The developers have provided staff with a list of outstanding items. That itemized list is currently being reviewed, verified, and approved by the Town Engineer. The amount posted would be the entirety of the outstanding items as approved by the Town Engineer. Due to the primary access from a state road, the developer was also required to fund offsite improvements within the state right-of-way in order to obtain their OSTA certificate from the state. A fully executed OSTA certificate is required to be provided from the state. Additionally, the Building Official also requires a letter from the Office of the State Traffic Administration that states he can begin issuing C/O's at the site. To date, neither of those documents have been received by Town staff.

Section 5.3.6 indicates the surety process of the bond posting:

#### 5.3.6 Surety

The Town Manager, acting for the Commission, may accept surety in lieu of actual site improvements in accordance with Section 7.3. **The surety that can be accepted by the Town Manager shall be limited to certified check, pass book/certificate of deposit, or a letter of credit.** No insurance bond will be acceptable. For existing buildings where site plan approval is required, a cash bond in the amount of 10% of the total site improvement costs shall be posted with the Town Manager prior to the issuance of a building permit. In no case shall the bond posted with the Town Manager be less than \$2500.

The developer would be required to post the appropriate bond and associated documents with the Town Manager as delineated in section 7.3.1.D as noted below:

**The Developer shall post cash or other negotiable security with a forfeiture clause, as approved by the Town Manager,** with the Manager. The negotiable security that can be accepted by the Town Manager shall be limited to certified check or a letter of credit. No insurance bond will be acceptable.

The bond would remain in place until the project has been completed and per the regulations would be required to be completed withing 1 year of posting the bond. During the remainder of the construction phase there may be periodic requests to release portions of the bond as the developer completes more of the on and offsite work. Typically, these requests for partial bond release would be approved by the Commission. Upon completion of the project the remainder of the bond would be released in conjunction with the final C/O's and other required documents for the property. The bond is posted to protect the Town if an unfortunate incident occurs where the developer can't finish the project. The Town can then use that bond money to hire a contractor to complete the project if needed.

Bonding is also regulated by the Connecticut General Statutes Chapter 124 Zoning, Section 8-3(g)(2) states the following:

**“(2) To satisfy any financial guarantee requirement, the commission may accept surety bonds and shall accept cash bonds, passbook or statement savings accounts and other financial guarantees other than surety bonds including, but not limited to, letters of credit, provided such other financial guarantee is in a form acceptable**

**to the commission and the financial institution or other entity issuing any letter of credit is acceptable to the commission.** Such financial guarantee may, at the discretion of the person posting such financial guarantee, be posted at any time before all approved site improvements are completed, except that the commission may require a financial guarantee for erosion and sediment controls prior to the commencement of any such site improvements. **No certificate of occupancy shall be issued before a required financial guarantee is posted or the approved site improvements are completed to the reasonable satisfaction of the commission or its agent.** For any site plan that is approved for development in phases, the financial guarantee provisions of this section shall apply as if each phase was approved as a separate site plan. Notwithstanding the provisions of any special act, municipal charter or ordinance, no commission shall (A) require a financial guarantee or payment to finance the maintenance of roads, streets, retention or detention basins or other improvements approved with such site plan for more than one year after the date on which such improvements have been completed to the reasonable satisfaction of the commission or its agent or accepted by the municipality, or (B) require the establishment of a homeowners association or the placement of a deed restriction, easement or similar burden on property for the maintenance of approved public site improvements to be owned, operated or maintained by the municipality, except that the prohibition of this subparagraph shall not apply to the placement of a deed restriction, easement or similar burden necessary to grant a municipality access to such approved site improvements.”