







PROPOSED MIXED-USE DEVELOPMENT  
(COMMERCIAL & RESIDENTIAL)  
404 BERLIN TURNPIKE  
BERLIN, CONNECTICUT

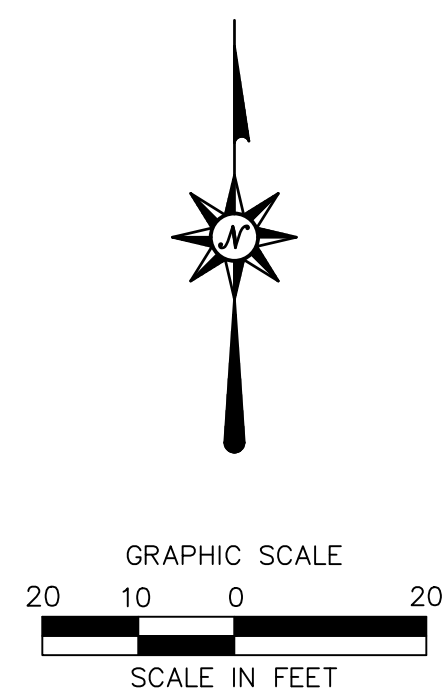
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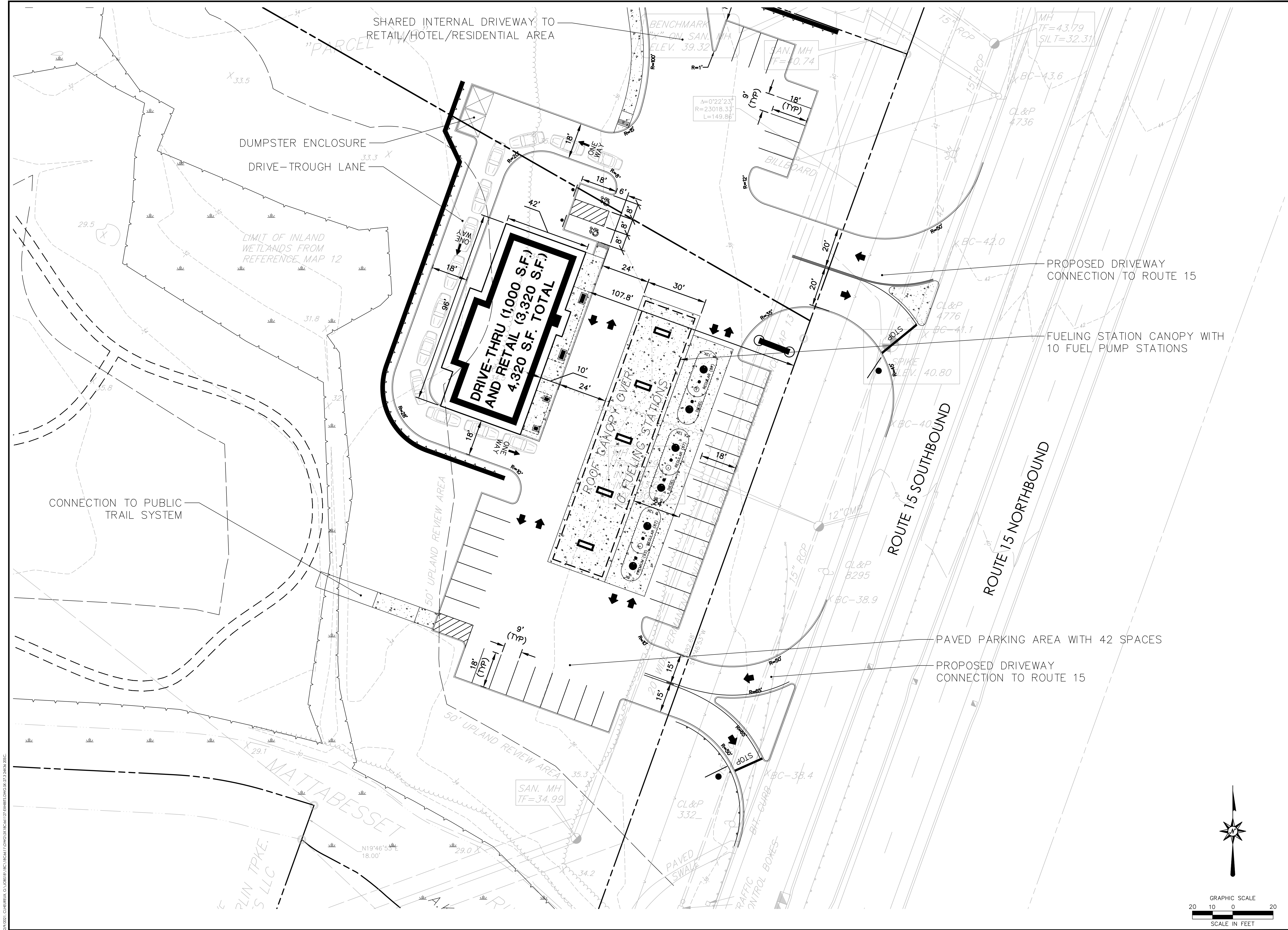
## SITE PLAN - RETAIL

Sheet No.

**SK-27.**









**TOWN OF BERLIN**  
**Public Works/Engineering Department**  
240 Kensington Road • Berlin, CT 06037  
Office (860) 828-7022 • Fax (860) 828-7180

**MEMORANDUM**

**To:** Maureen Giusti, Acting Town Planner  
**From:** Michael S. Ahern, P.E., Public Works Director/Town Engineer *MSA*  
**Date:** February 17, 2021  
**Re:** 404 Berlin Turnpike – Mixed Use Development

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These comments are provided in addition to the peer reviews underway by Town consultants, and are focused on the sanitary pump station that is operated by the Berlin Water Control Commission (BWCC).

**Background:** The sanitary pump station is located at 436 Berlin Turnpike on a triangular-shaped property surrounded by the proposed development to the north, south, and west. This property has an access easement from the Berlin Turnpike benefitting the Applicant property, which the Applicant proposes to extinguish in return for an easement across the western portion of the BWCC property (for an internal roadway). The Applicant and BWCC staff and consultant discussed reworking the easements and other elements of the plan, but no agreements have been made. See below for related comments:

- Easements – BWCC and Town engineering staff met with the Applicant's planning and engineering team on a number of issues on November 11, 2020. One of the requests from the Town was for the Applicant to provide a summary of the proposed/revised easements involved in the easement "swap" noted above. The request, at that time, was for an outline of the various easements conceptually discussed with the Town. This summary has not yet been provided. Considering where this project is in the approval process, Staff are now requesting draft easement language and associated draft easement mapping for BWCC and Corporation Counsel review. One element of the easement discussion is to allow periodic use of the internal roadway(s) by the BWCC for future work on the pump station, which will require the use of a crane and other equipment.
- Odors – The sanitary pump station operation has associated odors in its vicinity. It may be advisable for the Applicant's team to evaluate the odor impact on the proposed development.

Please let me know if you have any questions.

cc: Ray Jarema, Water Control Manager  
James Horbal, Deputy Director of Public Works



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February 16, 2021

Ms. Joan Veley, Chairwoman  
Berlin Planning & Zoning Commission  
Berlin Town Hall  
240 Kensington Road  
Berlin, Connecticut 06037

Re: ***Zoning Change, Site Plan and Special Permit Application Review***  
404 Berlin Turnpike  
WMC Project No. 21010.10

Dear Chairwoman Veley & Members of the Board:

Wengell, McDonnell & Costello Inc. (WMC) has been retained by the Town of Berlin Planning and Zoning Commission to conduct a third-party review of the above mentioned project. We have completed our review based on the following documents provided by the Applicant:

- A) Site Plan Application and Special Permit Application for Mixed-Use Development at 404 Berlin Turnpike (Map Lot Block: 10-2-83-12-7333 & Map Lot Block: 10-2-83-12-7334); Map Lot Block: 10-2-83-13A; Map Lot Block: 10-2-83-13C-7509 and 10-2-83-13C-7510; by BT 2008, LLC., dated October 22, 2020.
- B) Plans entitled "Land Development Plans for Proposed Mixed-Use Development for Planning and Zoning Site Plan Approval" – 404 Berlin Turnpike, Berlin, Connecticut. The plans included Title Sheet, Topographic Survey, Lot Line Revision Plan, General Notes, Demolition Plans, Site Plans, Grading and Drainage Plans, Site Utilities Plans, Sediment and Erosion Control Plans and Notes, Landscape Plans and Notes, Lighting Plans, Phase Plan and Detail Sheets (We note Lighting Plans were not included in the 38 Sheet Plan set) Prepared for Commercial Services Realty, prepared by BL Companies, dated October 22, 2020.
- C) Plans entitled "New Convenience Store / Gas Station" – 404 Berlin Turnpike, Berlin, Connecticut. The plans included Elevation and Building Footprint prepared for Commercial Services Realty, prepared by BL Companies, dated December 19, 2019.
- D) Plans entitled "Proposed Mixed-Use Development" – 404 Berlin Turnpike, Berlin, Connecticut. The plans included Wetlands Comparison Map and Sketch Plan Conservation prepared for Commercial Services Realty, prepared by BL Companies, dated March 9, 2020 and November 9, 2020, respectively.
- E) Plans entitled "Berlin Turnpike Residences" – 404 Berlin Turnpike, Berlin, Connecticut. The plans included Ground, First, Second, Third & Fourth Level Floor Plans and Exterior

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Elevations, prepared for Commercial Services Realty, prepared by Phase Zero Design, dated March 2, 2020.

- F) Stormwater Management Report for the proposed Mixed-Use Development located at 404 Berlin Turnpike, Berlin, Connecticut. Prepared for Commercial Services Realty, prepared by BL Companies, dated September 16, 2019; last revised July 17, 2020.
- G) Wetland Report for the proposed Mixed-Use Development located at 404 Berlin Turnpike, Berlin, Connecticut. Prepared for Commercial Services Realty, prepared by Tighe & Bond, dated August 2017.
- H) Listed Species & Habitat Surveys for the Proposed Commercial and Luxury Residential Development located at 404 Berlin Turnpike, Berlin, Connecticut. Prepared by REMA Ecological Services, LLC, dated February 19, 2019.
- I) Housing Affordability Plan as provided by Section VIII-H-8 of the Zoning Regulations of the Town of Berlin - 404 Berlin Turnpike, Berlin, Connecticut. Prepared by BT 2008, LLC and Alter & Pearson, LLC; dated October 22, 2020; last revised November 20, 2020.
- J) Geotechnical Study for Proposed Filling Station and Convenience Store - 404 Berlin Turnpike, Berlin, Connecticut. Prepared by Welti Geotechnical, P.C., dated December 31, 2019.
- K) Geotechnical Study for Proposed Development - 404 Berlin Turnpike, Berlin, Connecticut. Prepared by Welti Geotechnical, P.C., dated July 25, 2019.

The +/-35.48 acre site is bounded on the east by the Berlin Turnpike (State Route 15), by existing development and the Mattabesset Sewer District ROW to the north, and by the floodplain of the Mattabesset River to the south and west. Abandoned structures and pavement on the site are to be demolished prior to construction. The proposed work consists of a mix of commercial and multi-family residential development that includes a hotel, retail store and gas station with a convenience store which are to be constructed in the following four phases:

- Phase 1 – The development of a 3,320 sq. ft. convenience store with 1,000 sq. ft. drive-thru establishment and a 10-pump gasoline filling station and associated parking.
- Phase 2 – The development of 200 multi-family residential apartment units with 20% of the units be deed restricted for household income at or below 80% Area Median Income. The 200 units will be constructed in five buildings together with carports, an 1,800 sq. ft. clubhouse, swimming pool, and the associated improvements. The five buildings total 224,360 square feet.
- Phase 3 – The development of a 7,280 sq. ft. retail building with a drive-thru window and associated parking.
- Phase 4 – The development of 100+/- room hotel and associated parking.

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As part of the infrastructure there will be three separate curb cuts off the southbound lanes of the Berlin Turnpike, paved parking and access roads, sidewalks, underground utilities, stormwater management facilities, lighting, landscaping and associated appurtenances. Additionally, less than 5,000 s.f. of permanent inland wetland impacts are proposed and the development area is also partially within FEMA AE and Floodway zones.

The above mentioned documents have been reviewed for conformance with both the Zoning Regulations of the Town of Berlin. We offer the following comments for your consideration:

### **Site Plans**

- 1) We note our office takes no exception to the proposed zone change request from BT-1 to BT-D, the mixed-use development or the Lot Line Revision Plan.
- 2) We suggest labelling the residential buildings for ease of designation when discussing logistics of the site.
- 3) WMC Consulting Engineers previously generated comments during the Inland Wetland & Watercourse Commission (IWWC) review in which BL Companies responded in letter dated April 3, 2020. It was indicated the majority of the comments would be addressed or incorporated into the design plans as the project moved forward into Planning & Zoning and permit approvals phases. The following comments have yet to be addressed in the current plan submission:
  - a. It was requested that the wetland flag numbers and locations be depicted on the plans along with the date in which they were field located by Tighe & Bond. The previous response letter by BL Companies indicated the flag numbers would be added to the plans and that the Wetlands were located by Tighe & Bond on January 30, 2020. We note the flag numbers are not yet updated and General Note No. 40 on Sheet GN-1 indicates they were flagged on July 26, 2017. Clarification is required.
  - b. A large amount of fill, complex retaining walls, stormwater management systems and associated infrastructure are required to construct the proposed development. We recommend a detailed phasing and grading plan be provided demonstrating how the site will be constructed and how erosion control measures will implemented throughout the construction duration.
    - i. The phasing plan provided is generic in nature and does not detail how Phase 1 is integrated into the existing topography, especially pertaining to the Stormwater Management Basin. We do not recommend the SMB be utilized as a temporary sediment basin while Phase 1 is operational, this would lead to 'clean' stormwater mixing with heavily sediment laden runoff from future phases.
    - ii. Depict the specific utility limits to be constructed in each phase.



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- c. Temporary Sediment Traps (TST) will be required to control runoff and the transportation of sediments due to the overall land area disturbed. A Temporary Sediment Trap detail is shown on Sheet DN-1; however, the locations of these sediment traps should be depicted on the plans and appropriately designed. Consideration may need to be given to locating these TSTs outside footprint of the development area (where possible), in the upland review areas, with diversions swales directing flow accordingly. The locations of the TST can then be restored to grade, planted and reseeded upon completion.
  - i. Phase 2 appears to be the most critical as the site is raised to meet proposed grades. Temporary Sediment Traps should be designed by the engineer and not left up to the Contractor to resolve with a site of this size and complexity.
- d. The roof leaders should be clearly depicted on the plans to ensure stormwater is directed to the appropriate stormwater management facility. It is suggested that they be directed to a suitable infiltration areas (where possible) or the nearest inlet structure to reduce icing concerns.
  - i. Roof leaders should be connected to the drainage system in a manner that matches the contributing watershed depicted in the Stormwater Management Report.
- e. The applicant is advised to initiate discussions with CTDOT regarding Encroachment Permitting for both the curb cuts and drainage connections. Should any plan changes be made as a result of Hydraulics and Drainage review, the Commission/Town should be made aware to determine if further review is warranted.
  - i. Please provide correspondence from CTDOT they have reviewed the plan proposal along with H&D comments or concerns have been appropriately addressed and necessary revisions incorporated into the design plans. We note failure to address comments could delay the construction schedule.
- f. The 30" inlet and outlet pipe in the vicinity of HDS-10 only has limited cover. It is unclear if this unit can be constructed or function as designed with the given inverts and relative top of frame elevation in accordance with the detail provided. Assign elevations on the detail to demonstrate its adequacy.
  - i. Additionally, the 30" outlet pipe will have no cover before it transitions to a culvert end section. Consideration should be given to installing a headwall or revising the grading accordingly.
- g. Specify catch basin types on the Grading and Drainage Plans.
- h. Specify required storm drainage manhole diameters on the Grading and Drainage Plans.

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- i. Ensure OCS-40 will function as designed with the resultant tailwater elevation created by USDS-1 during the design storm event.
- j. The riprap apron designs associated with FES-20 and FES-31 do not apply at locations of steep slopes. Provide adequate erosion control protection via riprap swale and locate any such aprons on level terrain at the bottom of the water quality basin.
- k. Consideration should be given to installing a trash rack at the inlet end of the 24" discharge pipe within the water quality basin.
  - i. No Trash Rack was called for or detailed on the plans. We recommend consideration be given to installing an outlet control riser structure at this location in addition to a formal emergency spillway for the basin due to the size and height of embankment required to retain stormwater.
- l. We recommend an impervious core material be used for the large embankment proposed to surround the Stormwater Management Basin.
  - i. No core material was called for or detailed on the plans. We recommend a full cross section of the Stormwater Management Basin be provided and/or embankment detail.
- m. We recommend the erosion control bond estimate, inclusive of landscaping or plantings associated with the Stormwater Quality facilities, be submitted for review as part of this application.
- n. We recommend the Town direct the Applicant to provide as-builts of the stormwater management facilities constructed and provide an engineer's certification that all aspects were built per the approved design plans.
- o. The plans and Stormwater System Operation and Maintenance Plan indicate inspections will be performed by a qualified professional. We recommend bi-weekly and measurable event reports be sent to the Town during construction.
  - i. It was noted the erosion control inspections would be performed as part of the CTDEEP permitting and Stormwater Pollution Prevention Plan; we want to reinforce these inspections should be done by a professional and not conducted by the Contractor of record responsible for the maintenance during construction.
  - ii. The O&M Plan submitted should be updated to specify mowing frequency at the Stormwater Management Basin and Water Quality Swale. In addition, the removal of any woody vegetation growth should be removed in these areas along with specifying at the riprap outfall areas.



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- 4) A discussion on how snow removal is warranted. Snow plows are naturally going to windrow snow obstructing the car ports or vehicles parked adjacent to the residences. Fencing and guide rail will border the western development limits and we note the Stormwater Management Basin should not be used for snow storage or disposal. Without heavy excavation equipment it is unclear how or where snow removal will occur and there will be concern with operating plows and machinery in close proximity to all the parked vehicles.
- 5) Consideration should be given to providing additional refuse and recycling areas. There are currently no locations in proximity to the retail building or the hotel.
- 6) We suggest dumpster pads should be expanded to accommodate minimally the front wheels of the service trucks to prevent tire rutting, especially in the non-commercial pavement areas.
- 7) We recommend guide rail be installed along the western retaining wall.
- 8) The water quality swale at the northwest corner of the development should be designed and constructed in accordance with 11-P5-1 of the CT Stormwater Quality Manual. Provide further detail.
- 9) We recommend fencing around the Stormwater Management Basin.
- 10) There is no defined Stormwater Management Basin maintenance access. We recommend removing the 2 parking spaces north of HDS-20 (next to the southern carport) and designating access at this location.
- 11) The subsurface stormwater collection system should be updated to reflect a minimum pipe size of 15 inches per section 2:01 of the Subdivision Regulations.
- 12) Consideration should be given to converting DMH-20 to a Type 'C' Catch Basin and shifting it to the west along the curbline to shorten the travel path of runoff and reducing icing concerns.
- 13) Consideration should be given to installing additional catch basin(s) east of CB-10 to reduce the watershed and reduce potential icing concerns. The single catch basin collects runoff in multiple directions extending up to the hotel, north of the retail building and adjacent to the residential building.
- 14) The existing 15" RCP onsite directing flow south toward the sanitary pump station is proposed to remain with additional fill placed to meet proposed grades. We recommend this pipe be inspected to ensure the joints are tight and aligned.
- 15) There are sanitary mains shown on Plan Sheet GD-2 that is not shown on Sheet SU-2 at the main entrance (northern curb cut) and the access drive west of the retail building. There is

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also a SMH depicted northwest of DMH-22 on Sheet GD-1 that is not shown on SU-1. Please coordinate utilities on all sheets and clarify discrepancies.

- 16) We recommend sanitary manhole junctions be provided at the sewer ends where the hotel is connected and northwestern most residential building in lieu of cleanouts.
- 17) There appears to be a utility conflict north of Sanitary MH-2 with the storm drainage crossing. Review and ensure all utility crossings have adequate separation.
- 18) The Berlin Water Control Authority indicated they have concerns with providing water service off their 20" concrete pressure pipe and is considering replacement. Is there any update to the discussion of possible cost sharing and will this infrastructure improvement impact the construction schedule or phasing aspect?
- 19) Has the Fire Marshal reviewed the plans and determined the site provides ample turning radii to allow for emergency access around the site?
- 20) No Site Lighting Plans were submitted for review although they are called out on the Table of Contents on the Cover Sheet.
- 21) No Sight Signage was called out or detailed on the plans.

### **Stormwater Management Report**

- 1) The Stormwater Management Basin as proposed does not meet any design criteria within the 2004 Stormwater Quality Manual (SQM) as a Primary Treatment Practice of a stormwater pond. Test results should be shown that demonstrates the basin will drain within 24 hrs and the seasonal high groundwater is greater than 2 ft below the bottom elevation of the basin. The concern is the underlying soils adjacent to the wetlands will allow for limited infiltration combined with a high groundwater level adjacent to the river. If this is the intent to maintain a wet bottom basin, which we suggest, the design should adhere to the SQM.
- 2) Without demonstrating and ensuring the Stormwater Management Basin will adequately drain, the HydroCAD analysis of the basin would not be applicable. The model assumes a dry basin to Elevation 34.0 and assumes nearly 20,000 c.f. of storage before releasing any flow at the 24" discharge pipe at Elevation. 37.0. We suggest further testing be conducted in conjunction with incorporating sediment forebays within the basin to contain the Water Quality Volume and release the higher flows without resuspension of sediments.
- 3) Demonstrate the drainage system within the State right-of-way is adequately designed and in functional condition to accept the stormwater discharge being proposed. A pipe capacity and hydraulic grade line analysis using the Rational Method should be provided. We suggest this system be cleaned and video inspected to the outfall to ensure all joints are tight and aligned.



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- 4) A detailed analysis of the stormwater collection system should be provided demonstrating it is designed to accommodate the 25-yr storm event. This analysis should include gutter flow, pipe capacity and hydraulic grading lines using the Rational Method. Ensure all design elevations and inverts match the plans. Watershed maps for individual catch basins should be provided.
- 5) A detailed analysis of the closed subsurface drainage systems should be provided that accounts for the tailwater elevation created by the Stormwater Management Basin and underground detention system.
- 6) Confirm the hydrodynamic separators specified, are designed and equipped to bypass the 25-yr storm event internally or provide external bypass structures to avoid the resuspension of sediments. If these units are located in groundwater, provide applicable design details to counter buoyance concerns.
- 7) We note the 2004 CT Stormwater Quality Manual designates Hydrodynamic Separators as Secondary Treatment Practices which is contradictory to the Treatment Train Efficiency Worksheets in Appendix E of the Stormwater Management Report. We suggest at least one Primary Treatment practice be used at each outfall location discharging stormwater offsite in conjunction with Secondary Practices and/or Low Impact Development (LID) design methods where feasible.
- 8) We suggest consideration be given to redirecting Drainage Area PDA-112 to the Stormwater Management Basin rather than the water quality swale. It is our opinion an appropriately designed basin can provide better filtration and sediment removal capability. Redirecting CB-14 to DMH-22 can easily achieve this revision and would eliminate a very deep drainage structure and pipe under the retaining wall to the north.

### **Architectural**

- 1) We recommend the Architectural Elevations associated with the Residential Buildings be updated to show the calculation of the actual building heights in accordance with the Zoning Regulations.
- 2) We note there were not Mechanical, Electrical or Plumbing Plans (MEP) submitted as part of the application.
- 3) Will there be a need for any drainage structures under the buildings where the carports are located? Any drainage needs under the buildings should be connected to the storm drainage system and shown on the plans.

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**Zoning Compliance**

- 1) It would be helpful to provide a density calculation on the plans to ensure compliance with Section H.6.d.iii of the Zoning Regulations. According to this regulation, 25.0 acres are required to achieve the 200 eight (8) dwelling units per whole acre. Please clarify.

**Geotechnical**

- 1) In reference to Welti Geotechnical Report dated July 25, 2019 “9.0 It is recommended that additional test borings and test pits be taken to better evaluate the depth and character of the existing fills and foundation requirements at each of the structures. The field investigation should include (1) at least 4 borings at the apartment and hotel structures, (2) at least 2 borings at each of the smaller structures, (3) one boring at the proposed fueling station tanks and one boring at the canopy. The boring locations should be staked located by surveyor with grade elevations.” Have these additional borings been conducted?
  - a. We note there were no borings conducted at the western most buildings or club house.
  - b. Boring B102 indicates very soft yielding and organic material up to 10 ft under the proposed Convenience Store. How will this be addressed?
- 1) The boring locations should be accurately depicted on the plans to assign the existing grade elevations such that particular unsuitable soil layers or groundwater levels can be evaluated and incorporated into the design where applicable.
- 2) It appears cofferdams will be required for installation and construction at the gas station. We suggest showing the approximate location of the cofferdam limits and where dewatering methods are to be directed. Dewatering discharge areas should not be directed discharged to the wetlands or collection system without filtering out sediment.
- 3) It is unclear on the plans what is to occur with the unsuitable, soft yielding or organic matter discovered by the borings. How much additional excavation will occur under the buildings and how will that material be disposed of and/or replaced?
- 4) What is the expected volume of fill required for the entire site and anticipated source of material?



**Traffic / Parking / Pedestrian Access**

- 1) The traffic study was not reviewed in detail as the Office of the State Traffic Administration (OSTA) will conduct a thorough review as this development is designated as a Major Traffic Generator.
- 2) There are 534 parking spaces proposed for this development which is above and beyond the required parking required per the zoning regulations by approximately 80 spaces. Consideration should be given to scaling back the parking or potentially approving the spaces but holding a portion “in reserve” which could be constructed should the actual demand be met once the development is fully constructed and operational.
- 3) The ratio of handicap parking spaces appears adequate in relation to the overall number of parking spaces proposed. Will there be any need for handicap parking under the buildings?
- 4) Consideration should be given to providing 2-way traffic around the hotel or reversing the one-way direction and placing a “Do Not Enter” sign east of the hotel upon entry into the site from the Berlin Turnpike.
- 5) Consider revising the ‘jog’ in the access drive between the hotel and the northeastern most residential building. This appears to be a location with multiple points of conflict, sightline restrictions and decision making needs by drivers. Consider a stop sign at this location for a vehicle travelling south.
- 6) Consider the potential need for speed humps, textured pavement or other method to slow traffic as it circulates around the residential buildings.
- 7) There are 42 parking spaces designated in the vicinity of the gas station convenience store in addition to the 10 gas pump stations. We suggest consideration be given to reconfiguring the parking layout such that 7-8 spaces can be provided along the immediate store front to limit the number of patrons from navigating across circulating vehicles.
- 8) We note there is a limited sightline for a vehicle exiting the southwest building parking from beneath and the driver must look almost 180 degrees. We suggest some sort of advanced warning sign for a vehicle maneuvering southeast around that corner.
- 9) There appears to be an overall disconnect with pedestrian access throughout the site and suggest a more contiguous network of sidewalks, ramps and pedestrian movements be implemented. We note the following observations and considerations for improvement:
  - a. Consider providing designated crosswalks from the residential buildings to the carports across the access drives.
  - b. The eastern most residential building sidewalks terminate and provide no connecting access to the retail or convenience store.

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- c. The pedestrian crosswalk west of the retail building terminates at a landscaped island.
- d. The sidewalk terminates east of the southeastern most carport with no link to additional parking or sidewalk network to the residential buildings.
- e. There is no crosswalk for parking across the access road opposite the hotel.
- f. Anyone patronizing the convenience store at the gas station must walk through the parking lot and navigate circulating vehicles.
- g. The site plan lacks loading and unloading areas for both residential and commercial uses.
- h. The passive recreation walkway at the southwest corner of the residential development provides no direct pedestrian access from any of the buildings and requires users to walk in the roadway.

Should you have any questions or require additional information, please contact us at (860) 667-9624, at your earliest convenience.

Sincerely,

**WENGELL, McDONNELL & COSTELLO, INC.**



Stephen R. McDonnell, P.E.

Cc: James Horbal, Deputy Director, Public Works  
Maureen K. Giusti, AICP, Acting Town Planner / ZEO

# Town of Berlin, Connecticut

## Planning & Zoning Commission

### Third Party Application Review:

Application for Zone Change, Site Plan, and Special Permit by BT 2008, LLC

Subject Property: 404 Berlin Turnpike, Berlin, CT

(Map Lot Block: 10-2-83-12-7333 & Map Lot Block: 10-2-83-12-7334);

Map Lot Block: 10-2-83-13A; Map Lot Block: 10-2-83-13C-7509 and 10-2-83-13C-7510



February 1, 2021

Revised to February 17, 2021

Prepared by:

Donald J. Poland, PhD, AICP

Managing Director, Urban Planning & Strategy

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February 1, 2021

Joan Veley, Chairwoman  
Planning & Zoning Commission  
Town of Berlin, Town Hall  
240 Kensington Road  
Berlin, CT 06037

Re: Third-Party Review – Zone Change, Site Plan, and Special Permit Application for 404 Berlin Turnpike

Dear Chairwoman, Veley:

As you are aware, Goman+York Property Advisors were retained by the Town of Berlin Planning and Zoning Commission to provide a third-party review of the proposed applications for zone change, site plan, and special permit at parcels generally known as 404 Berlin Turnpike. This review was conducted by me as an impartial planning and land use subject matter expert.

The scope of work for this assignment, as outlined in our agreement with the Town, was to provide a comprehensive and technical review of the proposed land use application(s) to determine and ensure compliance with the regulatory requirements set forth in the Town of Berlin Zoning Regulations. This review included the following:

- **Zoning Change Application** - Review of the application to determine compliance with the statutory requirements of CGS Chapter 124 for a zone change and the regulatory requirements of Section XIV. Administration, Subsection (E) Zoning Amendments of the Berlin Zoning Regulations. This review includes consideration of the Comprehensive Plan of Zoning (the Zoning Regulations and Zoning Map as a collective plan for future development) and the 2013 Plan of Conservation and Development.
- **Site Plan and Special Permit Applications** - Review of the applications to determine compliance with the regulatory requirements of Section VIII. Special Use Zones, Subsection (H) Berlin Turnpike Zone; Section XIII. Site Plan; and Section XII. Special Permits of the Berlin Zoning Regulations. This review includes consideration of site design, architectural design, the Housing Affordability Plan, the Market Survey, and the Economic Impact.

After conducting the review of these applications, I find that the proposed mixed-use development meets and exceeds the requirements for approval. However, I did find aspects of the application should be given further attention and consideration by the Planning and Zoning Commission. In doing so, the Commission can determine if revisions to the proposed plans are required, if revisions to final approved plans are required, or if conditions of approval are necessary to move forward with an approval of the application(s). In addition, please keep in mind that my comments and recommendations are advisory, and the Commission is not bound to my opinion. It is my role, as a planning consultant and subject matter expert, to provide the Commission with a professional perspective so that the Commission can make an informed decision.

I also want to be clear that I do not believe any of the concerns or considerations that I express in this report raise to a level of non-compliance with the requirements of the Zoning Regulations, or suggest that the application(s) should be denied. The items for consideration that I raise are aimed at improvement—creating a



more suitable site design and effective and efficient development. In addition, as part of this review, I conducted a meeting with applicant and members of the design team to inform them of my concerns and consideration and to discuss potential solutions. I was joined in this meeting by Town planning staff and I believe we had a productive discussion with applicant. Most important, I believe the applicant was appreciative of the input and willing to work toward solutions.

This report is presented in eight sections and an appendix. Those sections are as follow:

- Section I. The Proposed Application
- Section II. The Zone Change Application
- Section III. The Site Plan Application
- Section IV. Parking and Site Design
- Section V. The Special Permit Application
- Section VI. The Housing Affordability Plan
- Section VII. Market Feasibility, Economic Impact, and Municipal Fiscal Impacts
- Section VIII. Conclusion
- Appendix. Staff Questions

I look forward to discussing this report further with you and the Commission, as I will be available at the public hearing(s) to present this report and to answer any questions you or the Commission may have. I thank you for your time and consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald J. Poland".

Donald J. Poland, PhD, AICP  
Planning Consultant

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This report was prepared by Donald J. Poland, PhD, AICP, Managing Director of Planning and Strategy, Goman+York Property Advisors, LLC. The report is a third-party review of an application before the Town of Berlin Planning and Zoning Commission. The opinions, findings, and recommendations presented here are based on sound planning principles and the professional experience and expertise of Dr. Poland. The opinions provided in this report are specific to the proposed application and should not be interpreted to apply to any other applications, locations, or projects.



## Section I. The Proposed Application

The proposed application petitions the Planning and Zoning Commission to rezone the subject site from BT-1 (Berlin Turnpike 1) to BT-D (Berlin Turnpike Development). In addition, the zone change application is submitted together with a Site Plan (Section XIII) application and a Special Permit (Section XII) application for a mixed-use commercial and residential development. The mixed-use development project is proposed in four phases and consists of the following uses and development:

- Phase I – The development of a 3,320 sq. ft. convenience store with 1,000 sq. ft. drive-thru establishment and a 10-pump gasoline filling station.
- Phase 2 – The development of 200 multi-family residential apartment units with 20% of the units be deed restricted for household income at or below 80% Area Median Income. The 200 units will be constructed in five buildings together with carports, an 1,800 sq. ft. clubhouse, swimming pool, and the associated improvements. The five buildings total 224,360 square feet.
- Phase 3 – The development of a 7,280 sq. ft. retail building with a drive-thru window.
- Phase 4 – The development of 100+/- room hotel.

The proposed mixed-use development includes all associated site improvements, including 534 parking spaces. The application, as submitted, is comprehensive and appears complete.

## Section II. The Zone Change Application

### *Comprehensive Plan of Zoning*

In Connecticut, the zoning regulations and zoning map, as a collective document, are recognized as the Comprehensive Plan of Zoning. The Comprehensive Plan of Zoning sets forth the community's future development plan and provides property owners with a *reasonable expectation* for the present and future use of land within the specified zoning districts. This is important to understand when considering an application for zone change because such changes to a zoning district should be *reasonable in nature* and should not *drastically change the character of the district or area*, nor should the changes be contrary to the *reasonable expectations of property owners*. That said, it is also recognized that communities evolve and change over time, and the Planning and Zoning Commissions must have the ability to accommodate change through amendments to the Comprehensive Plan of Zoning.

*The proposed zone change from BT-1 to BT-D is consistent with Berlin's Comprehensive Plan of Zoning.* The primary reason for this finding—the zone change being consistent with the Comprehensive Plan of Zoning—is that the BT-D zone is an overlay zone that is designed to be used in locations already zoned BT-1. It is this symbiotic nature of the BT-1 and BT-D zoning designations that removes concerns of inconsistency or raises concern that the zone change may result in spot zoning.

As an overlay zone, the underlying BT-1 remains in effect. However, the BT-D zone provides an alternative development approach and application process that the property owner/applicant choose to utilize by requesting the zone change. Therefore, the BT-D zone is not imposed unwillingly upon a property or a property owner. The key change that occurs with the adoption of the BT-D zone is that it offers a more flexible approach to site design and allows for uses to be assembled into a mixed-use development. This approach is commonly known as a Master Plan development approach. The Master Plan Development allows the Commission to elevate considerations of design elements, while affording itself the *legislative discretion of a zone change*





*application* when considering the Master Plan. For the applicant, the BT-D zone offers greater flexibility as to the dimensional requirements and site development standards. By providing this flexibility, *the Commission can work with the applicant to achieve better site design*. The aim of better design consideration and flexibility in site development standards makes this approach more favorable to the ridged standards and approach of conventional zoning.

The purpose of BT-D zone is to *promote mixed use development, provide for a variety and diversity of housing opportunity, provide for affordable housing opportunities, encourage walkable commercial development*, while ensuring *high-quality design and offering open spaces and other public amenities to the community*. In my professional opinion, the proposed application meets the intent and purpose of the BT-D zone. In addition, it is important to note that three of the four individual uses proposed in the mixed-use development are allowed, individually, in the BT-1 zone. The multi-family residential use is the only use that is need to the area. Therefore, the change to the BT-D zoning designation is not substantially changing the uses allowed at this location, it is simply allowing for these uses to be assembled into a comprehensive application and mixed-use development that includes multi-family residential development. Based on the review and the above discussion, *I find that the proposed zone change application is consistent with the Comprehensive Plan of Zoning*.

### ***Plan of Conservation and Development***

When considering a zone change application, in addition to reviewing the application for consistency with the Comprehensive Plan of Zoning, the Commission must also consider the Plan of Conservation and Development (POCD). The POCD is a policy document that is advisory, and the Planning and Zoning Commission is not *bound to the policies and recommendations of the Plan*. However, the Commission should *review and consider* the recommendations and policies contained within the POCD that relate to the zone change area and how the proposed zone change (and the proposed development, seeing that this is a Master Plan development) relate (or not) to the POCD.

The POCD, first and foremost, is a land use plan. That means the primary objective of the POCD is to plan for spatial organization, density, and intensity of existing and future land use. In doing this, the POCD considers the social, economic, and environmental characteristics of the community to inform the land use policies. The planning for future land use also allows the community to further plan for the secondary objective of the POCD, planning for the public infrastructure and community facilities needed to support future land use.

This understanding of the POCD, as a land use plan and public infrastructure plan, reveals the big picture nature of the POCD and exposes the limits of the POCD to conceptualize the specifics and nuances of any given development application. Unfortunately, the big picture nature of the POCD makes it easy to cherry-pick the POCD for policies and recommendations that are either consistent or inconsistent with a specific application. Therefore, when reviewing a specific land use application against the POCD, I typically seek to frame the review with two general questions. First, did the POCD planning process and/or does the POCD as adopted conceptualize this kind of development in this general area of the community? Second, does the application and development generally forward the goals and objectives of the Plan?

Based on my review of the Berlin 2013 Plan of Conservation and Development, the BT-1 and BT-D zoning districts, and the proposed application, I believe the answer to both questions is yes. While the POCD did not conceptualize this specific development, the Berlin Turnpike Corridor was conceptualized for further development. In addition, and more specifically, the *Target Economic Development* site number five conceptualized this location as a future sewer service area, which implies future development, density, and



intensity. Regarding the second questions, the proposed zoning change application and mixed-use development does not simply forward the economic development aims of the POCD, the application also forwards the conservation aims of the POCD by providing preserved open space, passive recreations, and public access. Therefore, I find that the proposed zone change (and mixed-use development) forwards the goals and objectives of the Plan of Conservation and Development.

### Section III. The Site Plan Application

Site plan applications are utilized to determine compliance with the standards and requirements established in the zoning regulations. The process of site plan review considers the proposed use(s), dimensional requirements (i.e., setbacks, height, etc.), and site design standards (i.e., parking, drainage, landscaping, lighting, etc.). The proposed use for this application is a *mixed-use development consisting of commercial and residential uses*. The mixed-use is permitted in this zone. However, the mix-use also requires a special permit. Therefore, this section on the site plan application will focus on the dimensional requirements and site design standards, and the use will be addressed in Section V below, which focuses on the Special Permit Application.

Site plan review is an administrative process that compares the requirements and standards set forth in the zoning regulation with the proposed site design of the application. An administrative permit (i.e., site plan) is an as-of-right approval, meaning if the proposed site plan meets the requirements and standards in the regulations, the application must be approved. That said, many zoning regulations, including the Berlin Zoning Regulations include *additional and often subjective* Standards for Approvals (Section XIII.A.9) that are more applicable to the standards or *considerations* (Section XII.D) required for Special Permit Uses. Therefore, my site plan review focuses on the dimensional requirements and site development standards, leaving the additional Standards for Approval (Section XIII.A.9) to be considered in the context of Special Permit application discussed below.

I find that the proposed site plan application *complies with the dimensional requirements and site design standards* set forth in the Zoning Regulations for the requested BTB zone. This determination is based on the information presented in the Zoning Information (Table) provided on Sheet SP-O (Overall Site Plan) of the application and my subsequent review of the dimensions shown on the site plan and associated documents.

Even though the application complies with the dimensional requirements and site design standards, I believe there are aspects of the site design that raise some degree of concern related to public health, safety, and welfare, or the aesthetics and functionality of the site that warrant further consideration by the Planning and Zoning Commission. Those considerations are presented below by phase.

#### *Phase 1 – Convenience Store Gas Station*

- Regarding vehicle circulation and pedestrian safety, the lack of parking near the store front (other than the two accessible spaces) creates a circumstance where customers will need to walk across vehicle travel lanes or through the filling station area to access the store. Therefore, the Commission may want to consider having the applicant provide pedestrian crosswalks from the parking areas to the storefront. In addition, the seven parking spaces south of the storefront may better serve the store than the spaces along the frontage. Therefore, the seven spaces south of the store may be suitable for designation for the store and spaces along the frontage could be designated for use by the conservation area.

#### *Phase 2 – Residential Apartments*



- Regarding vehicle circulation and pedestrian safety, the Commission may want to consider having the applicant provide pedestrian crosswalks from the two southern residential buildings across the parking area and travel lane to the trash receptacles. This may require the removal of a few parking spaces (see discussion of parking requirements in Section IV).
- The site plan and parking area designs do not appear to provide for loading areas to accommodate tenants moving in and out. Without such designated areas, it is likely that moving related vehicles may double park, potentially blocking access to parking spaces and constraining the travel-way. Therefore, the Commission may want to consider having the applicant provide loading areas for each of the five buildings. Providing loading areas may require the removal of some parking spaces (see discussion of parking requirements in Section IV).
- Structured Parking – Under the Buildings:
  - On Sheet A101, there appears to be a space between Stair 2 and parking space number 4 that is not numbered. Is this intended to be a parking space? If not a parking space, the Commission may want to consider having the applicant stripe and sign the area for no parking.
  - There does not appear to be any accessible spaces in the structured parking areas under the building or in car ports. I am not sure on the specifics of how ADA applies to these parking areas and if accessible spaces are required in these structured areas. Therefore, the Commission may want to have the applicant verify the requirements of ADA and their compliance with ADA.
  - Based on the configuration of the overall parking area and the location of walls within the structured parking areas, it appears that spaces 3, 15, & 21 may have some degree of obstructed views when vehicles are backing out of the parking spaces. Therefore, the Commission may want to have the applicant provide signage informing the driver to watch for traffic or some similar language.
  - Based on the configuration of the overall parking area and the location of the end wall next to parking space 14, it appears that a vehicle may have difficulties backing out of space 14 due to the wall and limited turn radius. The Commission may want to have the applicant verify that an adequate turn radius exists for a vehicle (i.e., mid-size SUV) backing out of space 14.
- Unit Design – One-Bedroom Units w/Den:
  - There are number of units that are one-bedroom units designed with a den. Based on prior experiences with similar designs, I have encountered circumstances where dens have been utilized as an informal (or illegal) second bedroom. Therefore, the Commission may want to consider having the applicant redesign the doorways to the dens as larger than standard door width so that a tenant cannot easily hang a temporary door and use the space as a second bedroom. Another design approach is to redesign the wall as a half-wall. [Please note, I am in favor of the oversized-one-bedroom units with dens, as I believe they are desirable in the market and will increase in desirability in the post-pandemic era. Therefore, I am not recommending the removal of units with dens. I am simply seeking to mitigate the potential for an unintended use of the dens.] (See sheets A102, A103, A104, and A105).





- The left turn into the parking area may create an obstruction and stacking that could back into the roadway if multiple vehicles are stacked at the traffic light exiting the site. Therefore, the Commission may want to have the applicant verify that adequate space exists for vehicles to pass a left turning vehicle on the right or to provide a turn lane into the retail building parking area.

#### *Phase 4 – Hotel*

- The hotel is proposed with 100 rooms and 81 parking spaces. Based on typical market occupancy rates, the potential for single-vehicle arrival guests occupying more than one room, or guests not arriving via private vehicles, the 81 parking spaces appear to be reasonable. In addition, the applicant is requesting shared parking with the retail building to the south, providing additional spaces for the hotel during periods of peak occupancy and parking utilization.
- Hotel Circulation and Parking Considerations:
  - Hotel guests utilizing the shared parking at the retail site to the south will need to walk across the travel area of the main entrance and exit to the site. This area will likely experience the highest vehicle traffic volumes on the site. Therefore, the Commission may want to have the applicant provide pedestrian crosswalks between the hotel and the retail site parking area. Providing crosswalks may require the removal of some parking spaces (see discussion of parking requirements in Section IV).
  - The one-way circulation on the north side of the hotel creates a dead end for vehicles traveling clockwise around the hotel. Based on arriving vehicles already facing west, I am concerned that the predominant circulation pattern around the hotel will be clockwise and as a result, the dead end created by the counterclockwise one-way driveway may be problematic. Therefore, the Commission may want to have the applicant reverse the direction of the one-way flow to clockwise. Another alternative the Commission may want to consider; if parking reductions are a viable option (see discussion in Section IV), have the applicant remove the six parking spaces and open that one-way drive to two-way traffic.

## **Section IV. Parking and Site Design**

Section VIII.H.7 Parking Requirements of the Berlin Zoning Regulations, provides that the:

“Parking requirements shall be as approved by the Commission based on information submitted by the applicant, demonstrating there is adequate parking for the use, taking into account the following:

- a. The mix of uses in the Master Plan and that they may be shared among the uses within the Master Plan as long as the shared parking is accessible to the respective use.
- b. Unless modified by the Commission, the minimum residential and commercial parking requirements shall be met with off-street parking.
- c. If the Commission modifies the minimum parking requirements in a cross-parking scheme, then it may require that the Master Plan demonstrate an area that can be improved with parking if deemed necessary in the future.”

In addition, Section VIII.H.2 Nature of the zone, states

“When a property owner chooses to use this section of the regulations, the regulations and design standards in this section shall supersede [...] The minimum parking requirements will apply unless



modified by the commission upon reviewing a Master Plan showing a cross-parking scheme within the mixed use development.”

While I recognize and respect the applicants aim to meet the standards provided in the regulations, it is surprising to me to realize that the applicant did not request to utilize the above two provisions allowing reductions in the required parking. It is my professional opinion that a safer, functional, and more aesthetically pleasing overall site design can be achieved if the applicant were to request, and the Commission were willing to approve reductions in the required parking.

In recent years, the planning profession (and allied design professions) has come to realize that parking has historically been overdesigned and overbuilt as the result of excessive minimum parking requirements. In addition, changes in demographics, increasing flexibility in work schedules, and changes in the way we shop, have further reduced peak demand and overall need for parking. For example, in 1960 only 13% of household were single person households. Today, nationally and in Connecticut, approximately 29% of households are single person households and approximately 40% of renter households are single persons. Additional examples are increases in online shopping and advent of ridesharing companies have reduced demand for parking. Unfortunately, zoning has been slow to adapt to these changes. However, flexible parking provisions, such as those provided in the BTM zone, offer the Commission the ability to reduce the required parking on a case-by-case basis.

The applicant, citing reputable sources in their presentation, have explained that the parking provided exceeds the parking that is functionally needed for the overall site. I agree with applicant, the parking provided is excessive. To demonstrate this, I have constructed a table (below) that compares the required parking in the Zoning Regulations, the proposed parking by the applicant, and the minimum parking standards that I frequently recommend to municipal clients when updating zoning regulations.

**Required Parking and Recommended Modifications**

Use	S.F./Units	Zoning Standard	Required Parking	Proposed Parking	Modified Required Parking	Recommended Parking
Convenience Store	3,320	1/250 S.F.	13	13	1/350 S.F.	10
Coffee D-T	1,000	1/75 S.F. or 3/seat	13	13	1/125 S.F.	8
Studio	40 units	2/unit	80	80	1.25/unit	50
1-Bedroom	120 units	2/unit	240	240	1.5/unit	180
2Bedroom	40 units	2/unit	80	80	1.75/unit	70
Retail	4,780	1/250 S.F.	19	19	1/300 S.F.	16
Bank	2,500	1/300 S.F.	8	8	1/300 S.F.	8
Hotel	100	N/A	TBD	81		81
		<b>Total</b>	<b>453</b>	<b>534</b>		<b>423</b>

Based on the modified required parking that I frequently recommend and believe to be reasonable and consistent with modern parking standards, I demonstrate that the parking may be overdesigned by up to 111 parking spaces. That equals approximately 17,982 square feet of parking surface or impervious coverage. It is not my intent to recommend that the Commission reduce the parking required by 111 spaces. My intent is to demonstrate that the Commission could reasonably reduce the required parking to achieve a safer, functional, and more aesthetically pleasing overall site design. In addition, many of the site review considerations that I discussed above could be achieved if the required parking were reduced. For example, such reduction could aid in:



- Reconfiguring and reducing parking associated with the Convenience Store to better address concerns of pedestrian and vehicle conflicts.
- Providing crosswalks for access to the trash receptacles associated with the two southern residential buildings.
- Requiring designated loading areas for each of the five residential buildings to better facilitate tenants moving in and out of the apartment units.
- Allowing for better circulation around the hotel by eliminating the one-way drive and allowing two-way traffic flow.
- Providing more greenspace, reducing impervious coverage, and improving the overall aesthetics and environmental impacts of the site.

The applicant, based on the site plans provided, has demonstrated they can meet the minimum parking requirements in the Zoning Regulations. This, I believe this is the first step to the Commission considering reductions in parking. As the Commission, you now know the requirements can be met. In addition, as the Commission you can request the site plan be modified to show areas available for future parking (if needed), while allowing reductions in parking. Therefore, the Commission may want to consider requesting the applicant provide an alternative site plan with revised site design and reduced parking for the Commission's consideration.

## Section V. The Special Permit Application

Special Permits are utilized to allow conditional uses. *Conditional uses* are allowed via a conditional (and more subjective) permitting process that requires a public hearing. Section 8-2 of the Connecticut General Statutes (CGS) states, the commission:

“may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit...subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values.”

The law governing conditional uses (special permits) recognizes that while a use may be desired and acceptable in a certain zoning district, the use (based on the unique characteristics and qualities of the use) may not be suitable in *all locations* within said zoning district. Therefore, the Commission may establish specific standards in the regulations that the applicant must demonstrate or comply with before the conditional use (special permit) is approved. In addition, the Commission can require conditions of approval to ensure compliance with the standards and to protect public health, safety, and welfare.

When considering any application for special permit, the Planning and Zoning Commission must determine if:

- (1) the proposed use of the property is expressly permitted under the zoning regulations,
- (2) the standards in the regulations are satisfied, and
- (3) any conditions necessary to protect public health, safety, convenience and property values as provided by Section 8-2 of the CGS can be established”

If all three requirements are satisfied, the Commission must approve the application.

### ***Special Permit Review and Findings:***





The proposed *mixed-use development consisting of commercial and residential uses* is expressly permitted in the requested BT-D zone. In addition, three of the four individual uses proposed in the mixed-use development are allowed in the underlying BT-1 zone. The fourth use, multi-family residential is suitable in this location, common in commercial area, and contemplated in mixed-use provision. Therefore, the proposed application meets the first criteria for determining compliance to approve the special permit—the use is permitted in the zone.

The second criteria, *the standards in the regulations are satisfied* requires that the specific standards for special permits established in the zoning regulations be considered and the applicant demonstrates compliance with those standards. Those standards are found in Section XII.D Considerations of the Berlin Zoning Regulations. The Regulation’s explain, “In evaluating a special permit application, the Commission shall take into consideration the health, safety and welfare of the public and shall prescribe reasonable conditions and safeguards as set forth in these regulations to ensure the accomplishment of those considerations and the following objectives.”

My review and findings of each of the Special Permit Considerations are provided in the following table.

#### Review and Findings – Special Permit Considerations

Zoning Regulations Special Permit Considerations	Review Findings
<b>Consistency with Town Plan.</b> The proposed use of the subject site is consistent with the purpose, intent and provisions of the town’s adopted land use plan, and the proposed use is one which is permitted to be established within the zoning district in which the subject site is located, subject to approval of a special permit	As discussed above, <i>mixed-use development consisting of commercial and residential uses</i> are permitted in the BT-D zone is consistent with the purpose and intent of the zoning district. I find that this consideration is satisfied.
<b>Appropriate Utilities and Improvements.</b> The development and its utilities shall be suitably located, adequately designed, and properly installed to serve the proposed uses, and to protect the environment from adverse air, water, or land pollution.	A review of the applicable Town Agency comments related to utilities and improvements appear typical with no significant concerns that cannot be addressed. The one concern related to water service and the 20” concrete pipe appears to be a work in progress with the applicant and Town. From a land use planning perspective, this area has suitable utility service, provided the water service is addressed and the PZC is receiving additional review and comments from an engineering firm. I find that this consideration will (or can) be satisfied.
<b>Preservation of Important Features.</b> The development of the site shall preserve sensitive environmental land features such as steep slopes, wetlands, and large rock outcroppings; shall attempt to preserve public scenic views or historically significant features; and shall be designed to ensure visual compatibility with structures within view of the site.	Substantial acres of land and sensitive areas are being preserved and public access is being provided for passive recreation. I find that this consideration is satisfied.
<b>Appropriate Location and Size.</b> The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, shall be such that it will be in harmony with appropriate and orderly	The Berlin Turnpike corridor is an intensive commercial development corridor. The proposed <i>mixed-use commercial and residential development</i> is appropriate in location, size, and intensity for this area. In addition, the Comprehensive Plan of Zoning, specifically the BT-1 and BT-D zones



development of the area including all adjacent zoning districts in which it is located.	conceptualize this kind of development is this location. I find that this consideration is satisfied.
<b>Appropriate Loading and Parking.</b> Loading and parking areas and drives shall be of adequate size for the particular use, and attractively screened from adjoining residential uses, and shall be laid out so as to prevent traffic hazards provided that, at a minimum, the specific provisions of Section IX.B shall be met.	I noted many considerations regarding loading and parking above and provide further discussion of parking in Section IV of this report. The specific provisions of Section IX.B have been (or will be) met. I find that this consideration will likely be satisfied.
<b>Adequate Streets and Highways.</b> The use shall not have a significant adverse effect on safety in the streets nor unreasonably increase traffic congestion in the area, nor interfere with the pattern of highway circulation.	From a land use planning perspective, I find that the Berlin Turnpike is adequate to support this use and applicant is take reasonable mitigation measure to ensure adequate access. That said, I yield to the engineering review for specific findings. I find that this consideration will (or can) be satisfied.
<b>Suitable Location for Use.</b> The location and size of the site, the nature and intensity of the operations involved in or conducted in connection with the use, and the location of the site with respect to streets giving access to it are such that the use shall be in harmony with the appropriate and orderly development in the district in which it is located.	As discussed above, this use is suitable for this location. In addition, the density and intensity of the use are suitable for the site. Specifically, this site and location are suitable for convenience retail, drive-thru coffee, gasoline filling, other retail/service, hotel, and multi-family residential on the interior of the site. I find that this consideration is satisfied.
<b>Appropriate Design.</b> The design elements of the proposed development will be attractive and suitable in relation to the site characteristics, the style of other buildings in the immediate area, and the existing and probable future character of the neighborhood in which the use is located.	The size, scale, massing, and general exterior design (materials and features) are appropriate for this site and location. The design and materials are similar to other developments throughout the region. By comparison, the age and design existing south of Deming Road are mostly outdated, and the area will benefit from the new investment and development. I find that this consideration is satisfied.
<b>Appropriate Landscaping and Screening.</b> The location, nature and height of buildings, walls, and fences, planned activities and the nature and extent of landscaping on the site will be such that the use shall not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.	The landscaping and screening are appropriate for this site and development. Regarding screening, this site is not proximate to or abutting dissimilar uses. Therefore, little need exists for substantial buffers. While the landscaping is adequate, the site could benefit from more green space (reduced parking) and flower gardens in the three lawn areas along the frontage. I find that this consideration is and can be further satisfied.
<b>Emergency Preparedness.</b> The proposed use or activity shall provide easy accessibility for fire apparatus and police protection and is laid out and equipped to further the provision of emergency services.	As designed, the proposed site provides reasonable and adequate accessibility for emergency vehicles. I find that this consideration is satisfied.
<b>Long Term Viability.</b> Adequate provision has been made for the sustained maintenance of the proposed development (structures, streets, and other improvements).	The market research and appraisal report reasonably demonstrate market feasibility. Based on my experience with market, financial, and project feasibility, it appears that the project would remain viable. I find that this consideration is satisfied.
<b>Purposes of Regulations.</b> The proposed use will be in accordance with the purposes of these Regulations.	As discussed above, the proposed mixed-use development is designed in accordance with the requested BTB zone that is intended to <i>promote mixed-use development, provide for a</i>



	<i>variety and diversity of housing opportunity, provide for affordable housing opportunities, encourage walkable commercial development, while ensuring high-quality design and offering open spaces and other public amenities to the community. I find that this consideration is satisfied.</i>
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As stated above, it is my professional opinion that the proposed development satisfies the second criteria for special permit, *the standards (considerations) in the regulations*. This includes the applicant adequately addressing the Standards for Approvals (Section XIII.A.9) for the site plan application. While my review above, and further remarks below, identify items for the Commission to consider, I do not believe the considerations rise to a degree of concern to disapprove the special permit, provided the applicant makes and demonstrates reasonable efforts and measures to address the considerations.

The final, and third consideration for a Special Permit application, is the *conditions necessary to protect public health, safety, convenience and property values*. The Berlin Zoning Regulations, Section XII.D.2 Consideration and Safeguards, provides the Commission the authority to impose “restrictions and conditions...in order to accomplish the objectives set forth in Section XII.D.” The provision continues to explain, the “conditions and safeguards may concern, without limitation, the location of structures; their size and layout; the distribution of and relationship between uses and structures; vehicular and pedestrian circulation; parking; open space; landscaping and screening; signs and lighting; the design and architectural treatment of all structures; and the maintenance of improvements to the property.” Therefore, I believe the Planning and Zoning Commission has the authority to place reasonable conditions on the approval related to the considerations raised in this report. Therefore, I conclude that the application can and will meet this third criteria.

## Section VI. The Housing Affordability Plan

The Housing Affordability Plan is important to ensuring the long-term affordability of the qualified units and to ensure the units are counted as qualified affordable housing in accordance with CGS 8-30g. Therefore, the Commission may want to consider the following comments on the Housing Affordability Plan:

- **Section III. Pro-Rata Construction and Dispersions.** The proposed pro-rata construction is good. However, I believe there should be a more detailed explanation of the dispersion of the affordable units. It is common for planning and zoning commissions to require that the affordable units be identified on the plans and that a table be provided in the Housing Affordability Plan that identifies the affordable units. In addition, the dispersion of units should be equal across all buildings, floors, unit type (number of bedrooms), size (square feet), and ADA accessible units. Furthermore, based on the three types of parking provided (i.e., structured under building, structured carport, and surface), if parking is allocated to units (for a fee or not), then the parking should also be equally dispersed.
- **Section IV Nature of Construction of Mixed Income Units.** Same comments as Section III above.
- **Section V. Entity Responsible for Administration and Compliance.** It is common for planning and zoning commissions to require the ‘Administrator’ of the affordable units—the entity that conducts the income qualifications of an applicant—not be the developer, owner, or property management firm. Typically, a third-party is contracted with to provide the income qualification and yearly reporting services. For





example, the Berlin Housing Authority would be a good candidate for this role. If the Housing Authority is not available to perform this service, other qualified firms or non-profits could be utilized.

- **Section. VI. Resident Eligibility.** This is a question for the attorneys, does this ‘special consideration’ for Town employees comply with Fair Housing laws?
- **Section. IX. Maximum Rental Price.** I agree with the January 12, 2021 letter submitted by Doug Truitt, Director of Social & Youth Services. The affordability calculations provided by the applicant do not comply with the requirements of CGS 8-30g. The calculations in Exhibit 2 (attached to the Doug Truitt letter) provides the proper calculations utilized by the State to determine qualified affordable rents.
  - **Line 9 Calculation:** To account for the estimated monthly expenses for heat and utility cost, the Connecticut Department of Housing, Section 8 Housing Choice Voucher Program provides a Utility Allowance Schedule that is commonly used to estimate monthly utility costs when calculating affordability for compliance with CGS 8-30g. The most recent Utility Allowance Schedule is for 2019-2020. The Schedule provides utility service estimates by unit types and number of bedrooms. I suggest that the ‘Heating for Highrise Apartment’ type be used by bedroom and all the applicable utilities listed that are not included in the rent (i.e., electric, cold water, sewer, trash, refrigerator, range/stove, etc.) be calculated. (Utility Allowance Schedule link: <https://portal.ct.gov/-/media/DOH/S8-UtilitySchedule062020.pdf>).
  - It is common for planning and zoning commissions to interpret *equal dispersion* of affordable units to be a generalized statement applied to all aspects of the affordable units. Therefore, my interpretation of *equal dispersion* is also generalized. As a result of this generalized interpretation, I suggest that parking should be included if parking spaces are to be assigned with any units (market rate or affordable) or if any fees are to be charged for parking—especially the structured parking under the buildings and in the carports—then the location and allocation of parking spaces should be *equally dispersed*. In addition, if additional fees are charged for parking spaces, those fees (costs) should be accounted for in the affordability calculations along with the utility costs.
- **Section XI. Change of Income or Qualifying Status of Resident.** The applicant, as discussed above, should identify the affordable units to be permanently qualified and occupied by income qualified households. Therefore, the language of this section should be revised to reflect the changes.

## Section VII. Market Feasibility, Economic Impact, and Municipal Fiscal Impacts

Goman+York regularly provides market feasibility, financial feasibility, economic impact, and municipal fiscal impact analysis and services for both developers and municipal governments. I project manage such assignments and have extensive knowledge and understanding of the housing market. The following are my thoughts on the market, economic, and fiscal impact dated provided by the applicant.

### *Phasing*

As part of the review and assessment of market conditions, I considered the proposed phasing of the development. It is not uncommon for planning and zoning commissions to be concerned with phased mixed-use



developments. Often, commissions are concerned the phasing will result in certain portions of the development being built, and others never being built. While such concerns are reasonable and understandable, phasing decisions for mixed-use developments are typically driven by both site development considerations and the market strength of the asset classes being proposed.

I find the proposed phasing to be consistent with both site development considerations and market conditions. For example, developing the convenience retail first, followed by residential, then retail, and last the hotel follows the market strength of these real estate asset classes. Convenience retail and multi-family residential are the strongest asset classes. In addition, phasing the residential construction—the largest of the four construction phases—on the rear of the site, allows for the most intensive site work and construction to occur before the retail and hotel development and it can be conducted without impacting phase one.

### ***Market Feasibility and Residential Rents***

Based on my understanding of the regional real property markets and asset classes, I agree with the findings of the Market Survey report dated October 28, 2020, issued by John Lo Monte Real Estate Appraisers & Consultants. My only comment is that I find LoMonte’s findings for the *market supported* residential rents to be conservative. To demonstrate this, the table below equalizes rents on a per square foot value basis and compare his market supported rents to my estimated *market supported* rents.

**Projected Market Supported Rents (Per Square Foot)**

Units	LoMonte	Goman+York
Studios	\$1.91	\$2.00
One-Bedroom	\$1.85	\$1.95
Two-bedroom	\$1.74	\$1.80

I believe the market supported rents will likely be a little bit stronger than is anticipated—stronger market rents are a positive outcome for the development and Town. Regardless of the differences, the *market supported* rents for both LoMonte and Goman+York are similar, consistent with regional market rents, and indicate the residential development to be reasonably feasible.

### ***Economic Impact – the Positive Impact of Residential Development***

The economic impact report, “*The Positive Economic Impact of Residential Development Coming to the Town of Berlin*” contained in the application is consistent with my own findings on the economic impact of multi-family residential development. The fact is, businesses follow rooftops (housing units) and households (the occupants of housing units), and housing is where *jobs go at night*. Therefore, while the specific numbers and dollars of economic impact may vary based on methods and assumptions, the positive economic impact of housing is consistent. New housing development creates construction jobs, sustains existing service-oriented jobs, furthers retail spending, increases disposable income and discretionary spending in the community, and generates new tax revenue for the municipality—all are positive benefits to the community.

One data point in the study that needs further comment is the estimated Real Estate Tax per unit. The study approximates the tax value per unit to be \$2,200 and the total tax value for the 200 units to equal \$440,000. I find this number to be conservatively low and would anticipate a higher tax value per unit. When conducting



financial feasibility analysis for developers and fiscal impact analysis for municipalities, I commonly find that the per unit tax value for existing multi-family housing ranges between \$2,000 and \$3,000 per unit and the per unit tax value on newly constructed multi-family housing ranges between \$2,800 and \$3,600 per units. Based on the market strength of Berlin and the mill rate, I would anticipate a tax value at or above \$2,600 per unit. In addition, the analysis does not account for other revenues, such as personal property taxes (motor vehicles), one-time permitting fees, user fees, and the commercial property taxes that will also be paid to the Town. I mention this difference in tax value and other fees and taxes to be paid because it is important to understanding the municipal fiscal impacts of the development.

### ***Municipal Fiscal Impacts & Public-School Enrollments***

It is not uncommon for planning and zoning commissions to assume that new housing is a net-negative fiscal impact to the municipality. Typically, this is based on the assumption that housing generates one or more school enrollments per housing unit and the cost of education per enrollment exceeds the tax revenues received. Unfortunately, this perception is not reality. The fact is, slow-moving changes in demographics, household sizes, and family structure have changed the dynamics of residential tax revenue versus education expenditures. These demographic shifts are resulting in smaller households, fewer family households, and fewer school age children. This is evidenced in that most Connecticut communities have been experiencing declining school enrollments. For example, Berlin's enrollments have declined from 2,909 in 2015 to 2,755 in 2020.

**Berlin School District Enrollments**

	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Berlin School District	2909	2879	2805	2795	2803	2755

As stated earlier in this report, in 1960 only 13% of U.S. households were single person households. Today, nationally and in Connecticut, approximately 29% of households are single person households and approximately 40% of renter households are single person. In 1970, 40% of households were married couples with children. By 2012, married couples with children declined to less than 20% of households. These two data points alone demonstrate that fewer housing units today have school age children than in decades past.

I regularly research and analyze school enrollments from multi-family housing development. This research and analysis has included projecting enrollments for proposed developments, follow-up analysis of actual enrollments once those developments are built and occupied, and the study of enrollments from existing multi-family developments. For example, I examined school enrollments from 80.6% of the multi-family housing in the Town of Ellington, as part of updating the Plan of Conservation and Development. This study included 18 multi-family development, with 1,862 units consisting of 1,015 one-bedrooms, 700 two-bedrooms, 142 three-bedrooms, and 5 four-bedrooms. The analysis revealed that the 1,862 multi-family housing units generated only 295 public school enrollments or 0.158 enrollments per unit. In two recent studies (2018 and 2019) conducted by the South Windsor Board of Education, it was found that newly constructed multi-family residential developments averaged 0.16 enrollments per unit. In addition, the South Windsor BOE found that only (approximately) 26% of the enrollments from newly constructed multi-family housing units were new to the school district.

These findings are consistent with comprehensive research conducted by Rutgers University, Center for Urban Policy Research "*Residential Demographic Multipliers – Connecticut (2006)*." On average, the Rutgers study found—newly constructed multi-family housing units in Connecticut—that studio and one-bedroom units result in 0.04 public school age children per unit and two-bedroom units result in 0.25 public school age children per



unit. Based on these and other findings, it is my professional opinion that the letter dated August 20, 2018 by Peter Marinelli is a reasonable representation of what Berlin can expect for school enrollments from the proposed 200 residential apartment units. The enrollments in Alterra Rocky Hill developments average out to approximately 0.17 enrollments per unit—consistent with the findings discussed above.

When calculating the municipal fiscal impacts of school enrollments from residential development, it is important to be thoughtful and careful about what is being assumed and calculated. For example, there is a tendency for planning and zoning commissions simply to divide the Board of Education Budget (Berlin's BOE Budget 2020 = \$44,977,844) by total enrollments (Berlin enrollments = 2,735) and assume that every new enrollment results in \$16,445 in new education expenditures. However, per pupil spending does not represent the actual cost of new enrollments. For example, per pupil spending does not adjust for non-property tax revenue in the BOE budget, nor does it account for costs in the BOE budget that are not impacted by changes in enrollments (i.e., district office expenditures, individual school administrative offices, utilities, building operations, and building, maintenance, prorated staffing, etc.). In addition, every new enrollment from newly constructed housing is not new to the school district—most new housing enrollments are from relocated households already in the district. Therefore, if the 200 proposed residential units are projected to result in 34 enrollments (the 0.17 per unit multiplied by 200), the fiscal impact calculation should not be \$16,445 multiplied by 34 (= \$559,130).

Based on my extensive research, analysis, and experience with calculating fiscal impacts, the per pupil cost of new enrollments is typically around 45% of per pupil spending, or in the case of Berlin, approximately \$7,400 per new enrollment (34 enrollments multiplied by \$7,400 = \$251,600). However, since many, if not most, of the 34 enrollments will not be new to the school district, it is reasonable to assume the actual impact to the BOE budget will be far less than the \$251,600. This more detailed approach to fiscal impacts reveals that multi-family housing with studios, one-bedrooms, and two-bedrooms do not create a negative fiscal impact on the municipality. I am confident the proposed 200 residential units will generate more in tax revenues than the government services, including education, that they utilize—the development will be a positive fiscal impact.

## **Section VIII. Conclusion**

Based on this extensive planning, land use, and zoning review, and as I have explained throughout this report, the proposed application(s), in my professional opinion, complies with the purpose, intent, and standards contained in the Town of Berlin Zoning Regulations for a *mixed-use development consisting of commercial and residential uses* in the requested BTZ zoning district. While I raised many items for Planning and Zoning Commission to consider further, I do not believe that any of those items rise to a level of concern to claim this application does not comply with the requirements contained in the Zoning Regulations. I am confident many, if not all, of the considerations I raised can be addressed to a satisfactory outcome and that development will benefit from those items.





## Appendix Staff Questions

Following the submission and review of my report, the Town of Berlin planning staff ask that I specifically address five items for consideration that were identified by staff during their review of the application. The following are my responses to those items and questions.

**Item 1.** Staff ask that I review the 10-acre minimum lot size required in the BT-D zone and the possibility of conflicting language in Section VIII.H.3 (assemblage of parcels) and Section VIII.H.11 (minimum lot size). This included answering if the parcels in the master plan can be divided to lots less than 10 acres. Specifically, this related the gasoline filling station and convenience store parcel to accommodate the land donation to the Berlin Land Trust and possible future division of hotel area into a lot to accommodate industry's standard of ownership. To best answer these questions, I provided my answers in the form of scenarios.

Scenario One – Section VIII.H.3.a, “the parcels are contiguous and the total land area is 10.0 acres or more.” My interpretation of this provision is that ‘*eligibility*’ for rezoning requires one or more parcels totaling a minimum of 10 acres—the assemblage of parcels for the zone. Therefore, to adopt the BT-D zone, no parcel of land needs to be 10 acres, but the collective area of the parcels to be zone BT-D must total 10 acres.

Scenario Two – Section VIII.H.11.a, “the minimum lot size is 10 acres.” My interpretation of this provision is that if a lot is being created in the BT-D zone via a lot split, lot line adjustment, or subdivision, then the minimum lot size for the parcel created is 10 acres.

Unfortunately, there are aspects of these two provisions, when considered together that create challenges from a zoning perspective. For example, in Scenario One, any parcel less than 10-acres that is assembled for the zone change, I would interpret to be legally non-conforming as to minimum lot size the moment the BT-D is adopted. This is contrary to the intent of zoning since zoning should not seek to create non-conformities. That said, the creation of non-conformities is not uncommon and often is unavoidable when crafting a new regulation or zoning district.

Per Scenario Two, any future lot line adjustment or subdivision to cut out the convenience store and or hotel into individual lots would be required to conform to the 10-acre minimum lot size requirement. However, based on Scenario One, if the convenience store and/or hotel areas were established as legal lots (through subdivided or lot line revisions) before the BT-D zone was approved, then those lots, if less than 10-acres would be legally non-conforming lots once the BT-D zone was approved. This interpretation is based on the minimum lot size in the existing BT-1 zone being two-acres. Therefore, lots smaller than 10-acres and large than two-acres can legally be created at this time.

My professional opinion is that the minimum lot size in the BT-D zone should be two-acres since the BT-D is an overlay zone, and the underlying BT-1 minimum lot size requirement is two-acres. The ‘*eligibility*’ requirement to establish a BT-D zone can remain 10-acres.

**Item II.** Staff asked for my interpretation of the gasoline filling stations criteria in Section XI.R. Specifically, the questions focused on two areas of potential concern: the allowable size of the convenience store and the separation distance required for automotive uses.



Unfortunately, during my review I missed the required separation distance requirement. In addition, my interpretation of the filling station, convenience store, and drive thru coffee shop uses was different than the accessory use provisions in Section XI.R.12.c.ii.

For the separation distances, I share staffs pause (or concern) that “the dumpster and queuing would be off the lot” and does not comply with the intent of the Regulations. From my perspective, the ‘dumpster’ would need to be contained on the lot with the use that the dumpster is serving. As for the queuing, based on my interpretation of convenience store use, I am not confident that the convenience store use is part of the gasoline filling station use.

Section XI.R.12.c.ii of the regulations view the convenience store use as accessory to the gasoline filling station. However, I do not believe that is the case, nor is it how I interpreted the uses during my review. From my perspective, the uses on the site are hybrids, not principal and accessory uses. In addition, based on the definitions of use, accessory use, principal use, building, accessory building, and accessory structure, it could be argued that the convenience store building is an accessory building to the principal use of the filling station. However, as defined, an accessory building is subordinate to a principal building. Unfortunately, the canopy for the filling station does not meet the definition of a principal building. Therefore, the convenience store building cannot be an accessory building to a non-existent principal building.

This complexity as to principal and accessory use is, in part, the reason for my interpretation of these uses more as hybrids than principal and accessory uses. The hybrid use interpretation considers the filling station as a principal use, the convenience store as a principal use, and the drive-thru coffee shop as a principal use assembled to provide related, yet different services. In this interpretation, all three uses are essentially retail uses, and retail uses are permitted. In addition, more than one retail use can exist on parcel of land. Therefore, the proposed site does not have principal and accessory uses, the site has multiple retail uses.

Returning to the separation and dumpster/queuing issues, I do not interpret or view the queuing as accessory to the filling station or violating the separation distance. However, I do believe the queuing must be on the same parcel of land as the uses it serves.

From a big picture perspective, my professional opinion is that the automotive use separation distance is the primary issue impacting this application and site. As a planning consultant, I routinely recommend commissions eliminate such separation distances from their regulations. My reason for this is that such requirements are from a time past and were intended to:

- Prevent potential threats resulting from the clustering of like businesses.
- Prevent or limit competition between similar businesses.

However, I do not believe that reasonable threats are posed by proximate automotive uses or that the role of zoning (or Commission) is to regulate consumer markets or business competition. In addition, the clustering of similar businesses, especially in the retail sector, is common and businesses reap the benefits of economic agglomeration, where two or more similar and proximate businesses create a great draw than one such business located on its own. Therefore, believe it is best to remove (or at the very least, reduce) such separation distance provisions for automotive uses.

**Item III.** Staff noted an error in my original report regarding my interpretation of uses permitted in the BT-1 zoning district. I recognized this was an error on my part and the language in the report has been addressed to correct the error.



**Item IV.** Staff asked that I better address the phasing of the project and the suitability of the mixed-use requirement of the BTM zone to adequately address the proposed phasing plan for the mixed-use development. In addition, staff asked if the Commission has the authority to place conditions the proposed phasing plan.

My report discusses phasing in Section VII, at the bottom of page 13 and top of page 14. In addition, I stated, “I find the proposed phasing to be consistent with both site development considerations and market conditions.” While some mixed-use regulations do require pro rata phasing of the residential portions of such development with the commercial development, I believe such requirements can be detrimental from the perspectives of market, development, and financial feasibility.

I understand the concerns that “there is never a guarantee that future phases will actually be built,” I believe this is a leap of faith the Commission must take with any development approval—there is no guarantee that any approved development will be built. In addition, I think it is important a Commission to understand that substantial property value is created by the master plan/site approval of all four phases. As I explain in Section VII above, market strength of the proposed asset classes is likely driving phasing and it will likely take longer to secure tenants for phases three and four. I believe it is unlikely the owner will pass on the development of phase three and four based on the value created and return on investment to be made those phases. My experience informs me that owners do their best to develop all phases as quickly as the market will allow.

My professional perspective is that the mixed-use requirement of the zone is adequately addressed in the proposed phasing plan. In addition, it is common for mixed-use developments to have more residential than commercial development/uses. That said, the final decision on phasing rests with Commission and the Commission can determine how it would like the development to be phrases. As explain in Section V of this report, the Commission has the authority to condition the approval of the special permit application.

The Berlin Zoning Regulations, Section XII.D.2 Consideration and Safeguards, provides the Commission the authority to impose “restrictions and conditions...in order to accomplish the objectives set forth in Section XII.D.” The provision continues, “conditions and safeguards may concern, without limitation, the location of structures; their size and layout; the distribution of and relationship between uses and structures; vehicular and pedestrian circulation; parking; open space; landscaping and screening; signs and lighting; the design and architectural treatment of all structures; and the maintenance of improvements to the property.”

Based on the phrase, *the distribution of and relationship between uses and structures*, I believe the Commission has the authority to place reasonable conditions on the approval on the phasing plan proposed by the applicant. Therefore, if the Commission seeks to condition the approval with some form of pro-rata approach to the commercial and residential development, I suggest that phases one, two, and three are reasonable for such a pro-rata consideration. Phase IV, the proposed hotel, is the volatile of the asset classes due to the economic impacts of the pandemic. Therefore, it likely that the proposed hotel will be the most challenging and slowest real estate leasing deal to secure, and conditioning other development phases and asset classes on the hotel may be detrimental to the completion of the phases.

**Item V.** Staff asked that I review and address the non-conforming landlocked parcel that is contained within the application site and the proposed lot line revision plan that shows the non-conforming landlocked parcel to remain, but to be “shifted” as to location.



I appreciate staff calling my attention to this parcel. While I was aware of the landlocked parcel, I missed the non-conforming status of the parcel. After reviewing the Zoning Regulations, I do not believe the change in location of the parcel creates an issue regarding the non-conforming status of the parcel. My reasons for this are as follow:

- When interpreting non-conforming uses, lots, and related provisions, I am typically very narrow in my focus as to specific non-conformity. What I mean by this, is that I believe that when we are dealing with non-conformities, we must focus on the specific nature of the non-conformity, the proposed change, and if the result of what is proposed impacts the non-conformity. For example, are we dealing with a non-conforming use, structure, dimension, or lot? In this case, the landlocked parcel, I believe we are dealing with a non-conforming lot. More specifically, the lot is non-conforming regarding the lack of frontage. In addition, based on the minimum lot size in the BT-1 zone, the lot also appears to be non-conforming as to minimum lot size.
- The Zoning Regulations state, “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 the nonconformity, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.”
  - The above provision addresses enlarged, expanded, or extended, the provision does not address relocated, or moved. In general, the Regulations are silent as to moving the location a non-conforming lot.
  - The non-conforming lot provision is limited to residential districts and the merger provision only applies to residential zones.
  - The permissive zoning provision in the Zoning Regulations states, “that which is not expressly permitted is prohibited.” However, that provision is limited to use and does not apply to dimensional provisions.
  - The non-conforming lot provision is limited to residential districts.

Based on the reasons above, my professional interpretation is that the non-conforming conditions of the landlocked parcel—the lack of lot frontage and the required minimum lot size do not change with the lot line revision. Therefore, the non-conforming aspects of the lot are not increased or changed and the lot line revision is acceptable.





### Statement of Qualifications

Donald J. Poland, PhD, AICP: I am an urban geographer and professional planner with twenty-five years' experience in land use planning, community and economic development, and market and development feasibility. I have worked in public, private, non-profit, and academic sectors as a municipal planning director, zoning enforcement official, planning consultant, executive director/CEO, and as a university lecturer and visiting professor in human geography, urban planning, urban studies, and tourism.

I earned my PhD in the Department of Geography, *Cities and Urbanization* program at UCL, London, England. My doctoral dissertation explored the remaking of urban space through the utilization of urban-ecological theory and metaphors to better understand how places change. I also earned a Master of Science in Geography, concentrating in planning, from Central Connecticut State University (CCSU) and a Bachelor of Arts degree, majoring in both Psychology and Geography, from CCSU.

As a planning professional, I am a member of the American Institute of Certified Planners (AICP) and a Certified Zoning Enforcement Official (CZEO). I have been accepted as an *expert witness* in the areas of *land use planning, neighborhood redevelopment, and community development* in the United States District Court, Eastern District of Louisiana. I have also been accepted as an expert witness in the Circuit Court of St. Louis County, State of Missouri. Over the course of my career, I have held the positions of Zoning Enforcement Official for the Town of East Hartford (1996-1998), Director of Planning and Development for the Town of East Windsor (2000-2004), and Executive Director/CEO for the Neighborhoods of Hartford, Inc.

Since 2008, I operate a boutique planning consulting practice and have worked on assignments in 18 states and over 100 local and regional jurisdictions. This work includes post-Katrina planning, zoning, and redevelopment strategies in St. Bernard Parish, Louisiana; an HUD NSP-2 application and reinvestment strategy for Venango County, Pennsylvania; zoning regulation modernization and updates as part of the 2016 Comprehensive Plan for Canton, Ohio, Canton, Ohio; a downtown economic investment strategy for Oswego, New York, and countless municipal planning and zoning assignments in Connecticut. In addition, I have also represented dozens of real estate developers before public agencies for commercial, residential, industrial, and mixed-use development projects—including market research, financial feasibility, project viability, and municipal fiscal impact analysis.

I am a Past-President of the Connecticut Chapter of the American Planning Association (CCAPA) and Past Chairman of the CCAPA Government Relations Committee. I have also served on APA's Chapter Presidents Council, the Executive Committee for the CT Association of Zoning Enforcement Officials, the Board of Trustees for the CT Trust for Historic Preservation, the Board of Trustees for the Bushnell Park Foundation, and was a public member of the State Board of Examiners for Professional Engineers and Land Surveyors. In addition, I have assisted the CT General Assembly's Planning and Development Committee with bill screening and drafting legislation. I also participated in the creation of the American Planning Association's development of a *smart growth policy guide* and was a member of the National Delegates Assembly (for the *Smart Growth Policy Guide*).

As an academic, I have taught over a dozen courses in human geography, urban planning, and tourism at Saint Joseph University, Manchester Community College, Central Connecticut State University, the University of Connecticut, and Trinity College. I held the position of *Visiting Lecturer in Public Policy*, Graduate Studies Program at Trinity College, Hartford, CT and *Associate Professor, Tourism and Hospitality*, at CCSU. I hold the position of *Visiting Associate Professor in Urban Studies*, Graduate Studies Program at Trinity College, Hartford, CT. I was awarded the CT Homebuilders 2003 Outstanding Land Use Official Award and am a 2004 alumnus of the Hartford Business Journal's Forty Under Forty leaders.