

TOWN OF MONTVILLE
Department of Land Use & Development

STAFF COMMENTS – PLAN REVIEW

Prepared by M. Davis and M. Badalucca, 7/22/24

Property Address: 303 Norwich-New London Turnpike (Route 32),
Parcel ID: 070/004/000
Application: 24SITE5.
Property Owner/Applicant: Lombardi Gravel, LLC
LS/PE: Ellen Bartlett, P.E., Green Site Design
Lot Size: 41,818SF (.96-acres).
Lot Frontage: 138 +/- feet on Norwich-New London Turnpike (CT Route 32).
Zoning District: C-1 (Commercial) and Route 32 Overlay Zone (OZ).
Public Water/Sewer: Yes. Development will connect to public water & sewer. Existing well to be abandoned by Licensed Well Driller per plan.
Flood Hazard Zone: No.
CAM Zone: No.
Public Water Supply Watershed: No.
Proposed Public Improvements: Yes. Work in State of CT right of way.
Legal: Submitted to Land Use Dept. on 6/12/24. Date of Receipt by PZC 6/25/24. Decision Required Date – 8/29/24.

Proposal:

Application is for the modification of approved site plan application number 22SITE10 and approved phasing plan for conversion of two existing commercial buildings to multi-family residential dwelling units (2 two-bedroom and 14 one-bedroom units) and associated site improvements.

Background:

The site was a built out commercial property that sat vacant for many years. The current owner worked with the prior Director to create a site plan that would support the conversion of the two buildings to residential use. As to the use, that conversion remains consistent with applicable land use objectives for this corridor and obviously, the renovation and adaptive reuse of this site will be beneficial for both the owner and the community.

The original site plan was approved on 2/28/23. The applicant subsequently requested approval of a phasing plan and that approval was granted on 1/23/24. Both of these approvals were based on both buildings being renovated. There were no substantive changes in the design, between the original and the phased option.

The applicant requested the approval of the phasing plan in order to be able to receive a CZC for the Phase I building, while completing renovations to the Phase II building. A number of changes, some significant, were made during construction without the

approval of the PZC or its staff. Staff became aware of these unapproved changes during an inspection undertaken to process the developer's request for a Phase I CZC. It was also confirmed at this time that the Phase I building was partially occupied without a CZC. At this time the site improvements were not completed and a CZC could not have been issued.

Staff did not initiate formal enforcement, but rather offered a period of 30 days to vacate the two dwelling units occupied without a CZC. The owner instead occupied an additional eight dwelling units in the phase I building. In light of the safety and liability concerns, to protect the Town's interests, litigation was initiated. This application for site plan modifications will establish the basis for the ZEO's ability to issue a CZC for the occupied building (Phase I), as well as establish the scope of improvements upon which the ZEO can issue a zoning permit for the modified Phase II.

It should be understood that all developers have the option to complete the site improvements per the PZC approved plan or to request modifications to the approved plan. Staff is always available and willing to discuss necessary or desired changes and will always seek the least disruptive alternative, subject to applicable regulations, codes, statutes and procedures. Depending on the nature and scope of the requested changes, staff may have the ability to approve some changes as field modifications. These are typically minor changes that are permissible under the applicable regulations and design standards and do not have any nexus to the factors the PZC considered in acting on the site plan. If requested changes do not comply with applicable codes and regulations, or if they do impact material concerns (e.g. traffic safety, matters under the purview of the IWC, etc.) the applicant must make application(s) to the governing commission for a site plan modification (or variances and wetland permits, if applicable).

Per standard protocol, as part of the review of any application for a CZC, when development is completed, a certified as built is provided, either certifying that the site has been completed in accordance with the PZC approved plan, or identifying changes made (with or without prior approval). Changes are then evaluated for compliance with applicable regulations/standards and that analysis determines the process necessary to approve those changes (after the fact). The developer/owner can then make informed decisions regarding the available options and inform staff as to how they would like to proceed. This collaborative and iterative process is a common part of any functioning land use office.

Based on site inspections in March/April, it was clear that site improvements were not complete and that unauthorized changes had been made, however the full scope was not determined until review of multiple successive as-builts and additional site inspections. In that work was continuing during the CZC app review, this made the process more complicated. For instance, the as built had to be updated several times, to document completed (presumed compliant) work. This complication and the resulting costs and "delays" would not have occurred had standard procedures been followed.

To date, the department has necessarily allocated substantial staff time to managing and resolving this matter. This has unfortunately taken limited resources away from necessary work and has undermined our ability to provide other clients with the level of service we believe they deserve and which we strive to provide. As with any business, adherence to standard procedures maximizes efficiency and return on investment. For instance, staff supports this applicant's request to bond and defer the final course of paving, as we know and appreciate that doing the final course now, will likely result in waste and inefficiency. In practice, deferral of the second/final course of pavement for phased developments has become a type of "standard procedure."

The standard procedures deployed for managing projects (site plan approval, construction, as built, CZC) are rudimentary conventions used for decades in communities throughout CT and beyond. In the interest of efficiency and fairness, the department will continue to use standard procedures in an unbiased manner, subject of course to the resources provided and the code, statutes and regulations that govern our operations.

During our review of application materials and the site, staff discovered additional changes that were not indicated on either the initial modification plan and/or on the latest as-built. These included additional off-site encroachments and changes to the location of an exterior door and awnings. In addition, modifications were being made to the Phase I building, based on a site inspection on 6/26/24. Finally, staff requested copies of the proposed revised architectural plans and upon our review it was apparent that part of the Phase II building would be demolished and not renovated. This demolition was not included in the site plan modification application as initially submitted. The application has since been modified to include this change.

It should be noted that some modifications are without argument positive and staff fully supports those modifications (see discussion of changes, below). In addition, many minor modifications would typically be processed by staff as field changes, but given the need for the submission of the revised site plan application, we have asked that those changes be included in the application plan and corresponding narrative.

To assist the Commission in its review, we have provided a list of the modifications already made and those proposed, together with staff's comments where necessary. In general, we've organized these into major and minor categories.

The scope of our review focuses on the proposed (and built) modifications.

Major Modifications

It should be noted that the developer was advised by the former Director to reach out to the then ZEO (Meredith), if he was contemplating revisions to the approved plan (see attached email). This obviously did not occur, leading to the complications we are now trying to resolve.

Dumpster Location

Typically, a dumpster location is not a major concern. For instance, on a large commercial site with location options, it's fairly easy to site the dumpster(s) so that they can be safely and efficiently serviced without creating conflicts with other site uses (patrons, employees, parking, traffic circulation, etc.). The subject site (and in fact most smaller adaptive reuse sites) do not offer this flexibility.

The developer/builder changed the dumpster location w/o prior review and approval by zoning staff and this set off a series of changes which created other issues, mostly relating to traffic safety. As staff understands it, the dumpster location was changed at the request of the utility company. Instead of accommodating the dumpster, the approved dumpster location is where the electrical panel was installed (including protective bollards). To be fair, the originally approved location was not practical, however, had the applicant complied with the site plan as approved, the collateral impacts of the unapproved relocation would not have occurred and the ZEO would not have had any discretion in this regard (as to the CZC).

As the Commission knows, this is a very congested site and in hindsight, a "better" option to the re-use would have been, in staff's opinion, a scrape/build new, taking full advantage of the OZ Zone regulations. The approved plan, i.e. renovating and reusing the two existing structures, requires the traffic/circulation design to accommodate the inefficiency and limitations associated with the one-way drive and the proximity of the two structures (including the vertical projection above the one-way drive). With respect to the dumpster, these same conditions also made it difficult to establish a location that was practical and safe, something that is important in a residential site, especially one as congested as this.

The "unapproved" location requires the refuse truck to drive in reverse, a difficult movement on a congested residential site. In addition, the width of the one-way drive along the south side of the site is excessively wide and had it complied with our one way drive standard, encroachments onto the abutter's land to the south might have been avoided. In light of the occupancy w/o a CZC, and given this is a residential facility, staff felt the dumpster relocation was a major change. In addition, a parking spot was removed to accommodate the change and a new parallel spot was substituted in a different location without review/approval.

In order to resolve the concerns created by the dumpster relocation, staff suggested the dumpster be moved to the front of the site, with proper screening. This location is not

ideal, however it will not require removal of a parking stall and the truck access should be safer. Staff therefore endorses the location shown as proposed on the modified site plan, subject to the slight adjustments described in the draft conditions of approval.

Partial Demolition of Phase II Building

As the PZC is aware, the phased approval was issued at the applicant's request, in part on the representation that both buildings would be renovated (consistent with the original non-phased approval). The applicant now proposes to demo a portion of the Phase II building. The demolition will arguably result in a more pleasing exterior, something that is of course important along this corridor and in this central location. Staff however is concerned about the potential safety aspects of the change from renovation to partial demo, given the present occupancy of the first building.

Staff has inquired with the building official as to code requirements for demo, in light of the residential occupancy and our concerns for the safety of the occupants during construction. The Building Official has advised that various protective measures and procedures must be in place for the demolition and as members may know, these are under the responsibility of the Building Official. We have asked the applicant to discuss these with the PZC during their presentation. Staff leaves it up to the PZC members to decide if they feel comfortable with this modification (partial demo), assuming that the PZC's approval of the phased "renovation" plan (and the partial occupancy contemplated under that plan by zoning) was at least in part predicated on the renovation of the Phase II building.

While the actual demolition permitting and management would be under the Building Official, the authority to issue a CZC lies exclusively with the zoning board and its agent and a CZC is required before a CO can be issued by a Building Official. In that the zoning board has authority over a site plan (not a Building Official), it is staff's opinion that to the extent the zoning board's review and decision on the phased site plan (and by extension the associated CZCs and occupancy) were based on renovation and not demolition, partial or otherwise, the zoning board is within the scope of its authority to consider the change from renovation to partial demolition as part of the phased plan.

To date, no CZC has been issued for the occupancy of the first building and no zoning permit has been issued for the changes proposed to the second building associated with the partial demolition. No zoning permit will or can be issued for the proposed changes to the second building until the zoning board approves the modified site plan and no CZC will or can be issued for the first building until the zoning board approves the revised site plan.

Parking Area Modifications

A number of changes were made to the parking areas and associated interior landscaped areas. No valid justification has been provided for these changes, however staff doesn't have any objection to certain of these.

1. The parking area to the northeast section of property was not constructed per the approved plan. The paved area was expanded to the east, impacting the approved retaining wall location in this portion of the site. In addition, the "geometry" of the paved area on the west side of the lower lot includes an odd and unnecessary oblique angle. Staff suggests this angle should be removed and the area constructed per the plan as originally approved. As to the retaining wall design and location, staff has no particular concerns, with the exception of the need for a PE certification of the walls, especially the easterly wall, given the major change in design based on the wall detail and plan notes on the approved site plan.
2. The parking area in the southwest corner was shifted south to the property line. It is unclear why this was necessary. Sufficient space remains to allow the parking to be constructed as approved and this is what staff suggests. Complying with the originally approved plan would also provide area along this property line for replacement landscaping.
3. The stone retaining wall in the landscaped area that separates the two rear parking areas was redesigned. With the exception of the pavement geometry (see above), staff has no objection to these changes. In the future, all site plans should indicate the surface treatment for all areas (this slope is covered in stone, as it is a 2:1 slope).
4. The traffic island in the southern portion of the drive aisles was made smaller, apparently to accommodate large truck movements (refuse truck). The relocation of the dumpster to the front will eliminate the need for this change and staff suggests this island be installed as per the original approved plan.

Encroachments

During our review of the site and the as-builts, staff discovered that multiple encroachments of various types had occurred onto adjacent properties. These were not part of either the original site plan approval or the approved phased site plan. They are not in any way endorsed by the Commission in acting on the modified site plan. The owner/developer is solely responsible for any liability or actions taken by interested parties that might arise as a consequence of these encroachments.

The concern for the proximity of the proposed work was raised by the Town's Engineer in December of 2022 (see attached plan review report from T. Cummings).

It is our understanding that an easement will be provided for the light post that extends onto the adjacent parcel to the south. Staff had initially requested letters of consent from all affected abutters, however the letters received were, for various reasons, insufficient, therefore, staff believes that unless the encroachment is a fixture (i.e. the light pole), or integral to the physical integrity of the actual on-site improvements, the PZC, in acting on the modified site plan, can simply note that none of the other encroachments are part of the modified site plan application approval.

In the future, staff strongly suggests that on sites like this, that prior to any work, the LS field locate the property lines and that a construction fence be installed for the duration of work, to prohibit encroachments. This is a standard common practice.

289 Route 32

1. The double lamp to the southeast of the property is encroaching onto 289 Route 32. Staff is pleased the developer added lighting, which was not shown on the approved plan, however due to the encroachment, this will require an easement, which we understand is being provided. See photo.
2. The as-built indicates a stone “strip” about 8-10 feet wide, encroaching onto 289 Route 32 for the entire length of the common property line. This was obviously not part of the approved plan. The approved plan indicates clearing limits entirely within the subject property and no stone. The approved plan also indicates an existing stone wall and block/retaining wall located on 289 Route 32, at/along this common property line. The as-built does not show either. The applicant should indicate if these were removed and if so, the reason for removal. Absent further information and clarification, staff is not prepared to offer any guidance or suggestions concerning this change.
3. The approved plan allowed trimming of vegetation at the southwest corner of the property. Instead, these hedges have been completely removed on 303 and on 289 Route 32 and the surface covered with stone. As noted above, the adjacent parking spaces have been constructed closer to the property line and not in the approved location per the approved site plan. Staff does not see any valid justification for this change and suggests that the requested change be denied and the improvements done per the approved plan, including the installation of replacement landscaping.

29 Maple Avenue Extension & 289 Route 32

A portion of the new retaining wall in the southeast of the subject property is shown as encroaching onto 29 Maple Avenue Ext. and 289 Route 32. Staff’s field review could not locate this (see photo). The plan should be revised.

29 Maple Avenue Ext.

Rip-rap from splash pad is shown on As-built as encroaching slightly onto 29 Maple Avenue. This is a private matter between the applicant and the abutter.

21 Maple Avenue Extension.

Retaining wall to the north of the property is encroaching on 21 Maple Avenue Extension. It also appears to *extend further than approved plan*. The applicant should explain why this extension was necessary and whether or not it is essential to the physical integrity of the site improvements.

15 Maple Avenue Extension. & 17 Maple Avenue Ext.

Trimming of trees on the north side of the property to install fence appears to be beyond the property line. It is presumed the vegetation will grow back and regardless, this is a private matter between the applicant and the abutters. The fence was installed on the subject property and is a beneficial addition for both security and screening. (see photo)

Minor Modifications

Most if not all of these mods are positive and/or necessary additions to the project (setting aside work done on adjacent property in some cases). The developer should be acknowledged for providing amenities such as the flag pole, the alternative guard rail and the additional landscaping. In retrospect, the lighting should have been shown on the approved site plan and architectural elevations, with standard “cut sheet” fixture details. Oddly, our site plan regulations require lighting to be shown on the site plan, but we do not have any lighting standards. In settings such as this (and in general), we should have standards for fixtures, lumens, etc. Staff can easily provide a draft that can be proposed as a zoning regulation amendment. Almost all Towns now use Illuminating Engineering Society recommendations, in part codified as “Dark Sky” design standards (see www.darksky.org), with appropriate revisions to suit local needs/preferences, if desired.

The following minor mods have been identified:

1. Installation of six (6) bollards in front of Phase I building (for protection).
2. Installation of 4’ chain link fence along the northern property line (trees were trimmed off site to install this fence).
3. Installation of mailboxes in front of Phase I building.
4. Installation of flag pole in front of Phase I building.
5. Installation of landscaping in front of Phase I building.
6. Change of material of guard rails from metal to timber.
7. Modification to stairway in rear of Phase I building.

8. Installation of door lights on the Phase I building.
9. Installation of wall mounted lights on the Phase I building.
10. Installation of a free-standing light to the northeast of the property (single head).
11. Installation of two free-standing lights (double head) behind Building I.
12. Door lights on Phase II building (proposed)
13. Door and awning on Phase II building to the SE corner. While we've put this in the "minor" category, it may impact the ability to use the adjacent one way-drive in terms of both horizontal and vertical clearance. This was also raised by the Town's Engineer in his 12/22 plan review.

Agency Comments

Uncas Health:	Comments received June 12, 2024 "No comments".
Town Engineer:	Comments received June 25, 2024 "The previously provided comments have been addressed".
Fire Marshal:	No comments received to date.
Building.:	See comments dated June 12, 2024 and June 20, 2024.
WPCA:	No comments received to date.