



MIDDLETOWN
Rhode Island

PLANNING DEPARTMENT

TOWN OF MIDDLETOWN

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To: William J. Nash, Jr., Chairman
Planning Board members

From: Ron Wolanski, Town Planner

Date: October 17, 2024

Re: Proposed amendments to the *Middletown Rules and Regulations Regarding the Subdivision and Development of Land* necessary to address amendments to state law adopted in the 2024 General Assembly, bill H7950.

In the 2024 session of the RI General Assembly, several bills were passed that will require amendments to the Town's zoning ordinance and/or subdivision regulations. Please see the attached proposed amendments to the town's development regulations that will address changes required by bill H7950. Note that in order to adopt amendments to the regulations, the Planning Board must first hold an advertised public hearing. The board should select a date to hold this public hearing. Following the hearing the Planning Board will consider adopting the amendments to the development regulations, and if adopted, will then forward the amendments to the Town Council for ratification.

In summary, H7950 requires the following amendments to the subdivision & land development regulations:

- Article 7 Improvement & maintenance guarantees –
 - Section 701 – Modification to specify the three forms of performance security acceptable to the Town: cash/cashier's check; performance bond; mortgage deed.
 - Section 702 – Modification to language to specify that the "permitting authority" shall determine the amount of security required.
 - Section 703 – Clarification of language regarding the entity authorized to approve the release of security as the permitting authority.

Please contact me with any questions.

cc. Town Solicitor

Draft Amendments to the Rules and Regulations Regarding the Subdivision and Development of Land per H7950

Proposed amendments are identified below in red type, with text to be removed ~~[struck]~~ and within brackets and text to be added underlined.

Article 7 - IMPROVEMENT AND MAINTENANCE GUARANTEES

Section 701 - Security for Completion of Improvements

The ~~[Planning Board]~~ permitting authority shall specify the required security which shall provide for and secure to the Town of Middletown the actual construction and installation costs of the public infrastructure and all landscape improvements shown upon final subdivision or development plans. The form of security shall be one or a combination of the following: performance bond, cash/cashiers check, or mortgage deed in a form acceptable to the Town Solicitor. ~~[reviewed by the Finance Director and shall be rejected by the Planning Board if the Finance Director disapproves of the content, format or wording of any security submitted to satisfy the intent and requirements of these Rules and Regulations.]~~ The required security shall guarantee the completion of construction or installation of all improvements, including landscaping, in accordance with the approved plans. All construction shall be inspected and approved under the direction of the Town Engineer, Public Works Director, Building Official, Town Planner, and/or Tree Warden, as applicable.

Section 702 - Amount of Security

~~[Prior to the submission of any final plat]~~ ~~[t]~~ The applicant shall submit to the Town Planner prior to the submission of any final plan for recording in the case of a subdivision or land development project, or plans seeking building permits in the case of a project approved under the Development Plan Review process ~~[, the applicant shall submit to the Town Planner,]~~ on Form 1 Appendix A, the written itemized estimate of the cost of all required infrastructure and landscape improvements, including labor and materials. Estimates for labor costs shall be based on prevailing wage rates. Such estimate shall be reviewed by the Town Engineer, and/or Tree Warden in the case of a landscape plan, who shall recommend to the ~~[Planning Board]~~ permitting authority an amount estimated to be sufficient to cover the cost of improvements as contained on Form 1 (Appendix A, § 9). The recommended estimate(s) shall be advisory in nature and shall not bind the ~~[Planning Board]~~ permitting authority to acceptance of said estimate(s). The amount of ~~[surety]~~ security required shall equal at least 125% of the cost estimate approved by the ~~[Planning Board]~~ permitting authority.

Section 703 - Duration and Release of Guarantee

Section 703.1 - Security Duration

The term of duration of the security shall begin with the date of endorsement of the final subdivision or development plan for a land development project by the ~~[Planning~~

Board] permitting authority, or approval of the development plan **review** by the **[Planning Board or Zoning Board of Review] permitting authority**, as applicable.

Section 703.2 - Security Release

Release of Security shall be conditioned on the completion of required improvements to the land within two (2) years of the date of endorsement of the final subdivision **or development** plan or approval of the development plan **review** by the **[Planning Board or Zoning Board of Review] permitting authority**.

Section 703.3 - Inspection and Certification

Upon completion of all required improvements to the land, the applicant shall submit a request for certification to the Town Planner. The Town Planner shall forward the request to the appropriate town official(s), who shall conduct inspections and certify that all required improvements as shown on the **[Planning Board]** approved plans have been installed in accordance with required specifications and town regulations and within the specified time period. In the case of certification of installation of required landscaping, inspection shall be performed by the Tree Warden. The applicant must also submit certification of completion from the appropriate utility companies. Such certifications from utility companies shall be provided, in writing, to the Town Engineer and Town Planner. The applicable town official(s) shall review the request for certification, inspect the improvements claimed to have been made, and provide certification of completion, in writing, or inform the developer of any deficiencies in writing, within thirty (30) days of receiving the request. A copy of the certification(s) or notification of deficiencies shall be provided to the Planning Board. The applicant shall be responsible for the cost of all inspections and certifications.

Section 703.4 - Phased Developments

In the cases of developments and subdivisions which are being approved and constructed in phases, the **[Planning Board] permitting authority** shall specify improvement guarantee requirements related to each particular phase.

Section 703.5 - Planning Board Recommendation to Town Council

The Planning Board shall review and confirm certifications of completion from town officials and utility companies. When it certifies that all required improvements have been made in a satisfactory manner the Planning Board shall release the remainder of the improvement guarantee and file a recommendation to the Town Council regarding the acceptance for maintenance of any street, open space or other public improvement. Prior to taking action to release the security the Planning Board shall notify the owners of all lots within the subject subdivision, where applicable, and all owners of property abutting the subject property of the pending action. Said notice shall be sent by first-class mail at least fourteen (14) days prior to the Planning Board meeting at which the release of security will be considered, and shall specify the date, time and location of said meeting. Furthermore, at least fourteen (14) days prior to the Planning Board meeting at which the release of security will be considered, the Planning Board shall notify the Middletown Roads & Utilities Advisory Committee of the pending action, and invite comments regarding the status and condition of the required improvements. The

lack of comments from the Roads & Utilities Advisory Committee shall not be cause for delay in the action by the Planning Board to release the improvement guarantee.

Section 703.6 - Maintenance Bond

Prior to release of performance security and acceptance of the public improvements for maintenance by the town, the applicant must file with the Finance Director a maintenance bond equal to at least ten (10) percent of the total initial security amount excluding the amount allocated for landscaping, guaranteeing the proper functioning and durability of all improvements except landscaping for a period of one (1) year after the date of their acceptance by the Town Council. Provided however, that the Planning Board shall have the discretion, based on the recommendation of the Town Engineer and/or the Public Works Director, to increase the required amount of the maintenance bond to an amount deemed necessary to ensure proper functioning and durability of all improvements.

Section 703.7 - Landscape Maintenance Bond

After certification of completion, but prior to release of performance security related to landscaping, the developer shall file with the Finance Director a maintenance bond equal to at least the total cost of the initial installation of the landscaping as evidenced through invoices for the installation. The Tree Warden shall review invoices and provide a recommendation as to the adequacy of the proposed maintenance bond. The bond shall guarantee the proper maintenance and durability of all landscaping as well as any replacement, as needed, for a period of one (1) year from the date of the release of performance security by the Planning Board.

Section 703.8 - Release of Responsibility

Sixty days before the expiration of the maintenance bond, the applicant shall submit to the Town Planner a request for inspection of all required improvements. The Town Planner shall forward requests for inspection to the Town Engineer and/or Tree Warden in the case of a landscape maintenance bond. If such inspection reveals deficiencies, the Planning Board, on written request of the applicant, may grant an extension of not more than 90 days to correct the deficiencies identified during the inspection. Upon expiration of said maintenance bond and correction of any deficiencies in the required improvements, the Planning Board will release the maintenance bond, and will notify the Finance Director of said release. The applicant shall be responsible for the cost of all inspections and certifications.

Section 703.9 - Partial Release of Security

The Planning Board may, at its discretion, approve partial release of security to cover the cost of remaining improvements, at any time by notification to the Finance Director, who will so inform the surety company, or take the required action to release the appropriate amount of the security held. However, no amount of the security may be released prior to installation of the binder course of road pavement in the portion of the subdivision subject to the request partial release. A request from the developer for a partial release of security shall be accompanied by an estimate of the cost to complete the remaining improvements, as required by the approved plan. The estimate shall be

reviewed and approved by the appropriate town official prior to the Planning Board taking action on the request. The amount of security retained by the Town must, at a minimum, equal 125% of the amount needed to complete all remaining improvements. All developer requests for partial release must equal at least 20% of the security then held by the Town. Prior to acceptance of the improvements by the Town, no more than 80% of the initial security shall be released.

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