



To: Planning & Zoning Commission  
From: Jeremy DeCarli, Planning & Zoning Official  
RE: July 7, 2021 Planning and Zoning Commission Regular Meeting – Staff Notes  
Date: July 2, 2021

The following are staff notes and comments as they relate to agenda items. Additional information and documents are available on the website. The status of applications is subject to change between the date of this memo and the date of the meeting.

**6. Public Hearings for January 5, 2022:**

**A. Application PZC-21-022: Atlantis Marketing, 1&5 Colchester Ave and 157 Main St. for a Zone Change from R-2 to Commercial. Map 07A/ Block 56/ Lots 21, 22, 24**

This application is similar to an application submitted in late 2020 for a zone change on the same three parcels. The proposed concept plan has changed in an effort to leave the existing residential structures in place at 157 Main Street. The previous application contemplated removing one of the structures.

The Zone Change request is being sought due to the desire to expand the current legal non-conforming use. State Law and Local Regulations do not allow non-conforming uses to expand. As you will recall, the property has been used as a fueling station since at least 1947 and was zoned Commercial until 1990, at which time the property was moved into the R-2 zone. The use as a fueling station can remain in perpetuity, but may not expand. If a zone change were approved, the owners would need to apply to the Commission for a Special Permit and Site Plan Approval.

The proposal encompasses three properties, all of which contain some level of non-conformity. 1 Colchester Avenue is nonconforming as to lot size, setbacks, and use. 5 Colchester is nonconforming as to lot size and setbacks. Finally, 157 Main is non-conforming as to use (two residential structures, 7 units) and north setback. The proposal of merging these parcels together and rezoning to Commercial would mostly erase the non-conformities.

If a petition is filed with the Commission signed by 20% of the landowners of property within 500 feet of the proposed change, a 2/3 majority of members (5 votes) is required to approve the change. Any less than 5 and the change does not go into effect. The reason for decision must be stated on the record.

In accordance with CGS 8-7d, the Commission may leave the Hearing open until the February 2 meeting if it desires. A decision must be made within 65 days of the date of closing the Public Hearing.

In making a decision, the Commission is required to consider the POCD and should also consider the Zoning Regulations themselves. The purpose section of the regulations, as well

as the purpose of the R-2 Zone and the C Zone should be considered alongside any recommendations made in the Plan of Conservation and Development. I've attached the language from these sections of the Zoning Regulations to this memo. Section 1.1 of the regulation, "Purposes" includes the following:

*These Regulations are adopted for the purposes of:*

1. *Guiding the future growth and development of the Town in accordance with the Plan of Conservation and Development.*
2. *Providing adequate light, air and privacy; securing safety from fire and other danger; and preventing overcrowding of the land and undue concentration of population.*
3. *Protecting the character and the historic, social and economic stability of all parts of the Town and ensuring that development is orderly and beneficial.*
4. *Protecting and conserving the value of land and buildings appropriate to the various zones established by these Regulations and throughout the Town.*
5. *Bringing about the gradual conformity of the uses of land and buildings to the Comprehensive Zoning Plan set forth in these Regulations and minimizing conflicts among the uses of the land and buildings.*
6. *Promoting the most beneficial relationship between the uses of land and buildings and the circulation of traffic throughout the Town, having particular regard for the avoidance of congestion in the streets and the provision of safe and convenient vehicular and pedestrian circulation appropriate to the various uses of land and buildings throughout the Town.*
7. *Aiding in providing a guide for public policy and action in the efficient provision of public facilities and services and for private enterprise in building development, investment, and other economic activity relating to uses of land and buildings throughout the Town.*
8. *Controlling development to an amount commensurate with the capacity of the land and the availability and capacity of public facilities and services, thereby facilitating adequate provision for vehicular and pedestrian circulation, water, sewerage, schools, parks and other public requirements.*
9. *Conserving and protecting the natural resources of the Town, especially groundwater and drinking water, in recognition of their importance to the health, safety and general welfare of East Hampton and its larger environs.*
10. *Assuring that proper provision is made for sedimentation control and the control of erosion caused by wind or water for any project for which a permit is required or sought from the Town.*
11. *Encouraging the development of housing opportunities, including opportunities for multi-family dwellings, consistent with soil types, terrain and infrastructure capacity, which will promote housing choice and economic diversity in housing, including housing for both low and moderate income households, and encouraging the development of housing which will meet identified housing needs.*

Section 4.2 (R-2 Zone) Includes the following Purpose Statement:

*"The purpose of this zone is to provide primarily for single family residential uses in those areas of the Town which have been predominately developed with single family dwellings*

*and to provide a transition of density between those areas which shall remain rural in nature, due to environmental and topographical concerns (R-3 and R-4) and those areas more densely settled (R-1 Zone)."*

Finally, Section 5.2 (Commercial Zone) includes the following Purpose Statement:

*"The primary purpose of the Commercial Zone is to provide for the orderly development of those areas for commercial, professional and business uses. Its intention is to create an atmosphere conducive to the growth and maintenance of uses essential to serving the needs of the community."*

**B. Amendment to Zoning Regulations** - Sections 2.2, 4.1.B, 4.2.B, 4.3.B, 4.4.B and Addition of Section 8.4.O and 8.4.P to allow for Home Occupations and Home Based Businesses

The proposed language is before you for review and comment by the Public. The PZC, in conjunction with the Economic Development Commission held several workshops over the summer and fall months to develop the proposed language for review. As this is a Commission led action, there is no timeline which must be followed. The Commission can keep the hearing open as long as it sees fit.

As of today (12/22/2021) I am awaiting comments from the Town Attorney.

**C. Enact Opt-Out Provision for Accessory Dwelling Units as Provided for in Section 6(f) of Public Act 21-29.**

As discussed, Public Act 21-29 requires that all municipal zoning regulations allow for the construction of one Accessory Dwelling Unit on each residential lot as of right. The provision includes a maximum dwelling size of 1000 square feet. -

The Commission may choose to "opt-out" of the current legislation, allowing the current regulation to remain in place which calls for ADU's to be reviewed by the Commission and issued a Special Permit. The Commission can only opt-out by a  $\frac{3}{4}$  majority vote (5 yea votes). If approved, the Town Council will also need to approve the opt-out by a  $\frac{3}{4}$  majority. If the opt-out is not approved by both bodies prior to January 1, 2023, the State provision would go into effect and Section 8.4.M of the regulation would become moot.

**7. New Business:**

**A. Review Commercial Zone Boundary at 265 West High Street**

Please see my separate memo regarding this agenda item.

**8. Old Business:**

**A. Application PZC-21-021: Global 66, LLC, 265 West High St., Site Plan Modification, Map 6/Block 12/Lot 9**

Revised Site Plans have been submitted which show the proper zone boundary and remove all parking and drive areas from the Residential Zone. I met with the Town Attorney on Monday December 13 to discuss several items, including the site plan. It is his opinion that although the zone line runs through the property, the use is situated squarely within the Commercial Zone and there is no concern with having site drainage or even the drive aisle

accommodated on the R-2 side of the zone line. That said, the applicant has moved the proposed water storage tank and access drive to be squarely within the Commercial zone. The only construction on the R-2 side of the property will be for the rain garden to accommodate some site drainage.

All site plan requirements have been met and can be approved as presented. After doing some research, the project appears to meet the threshold requiring a review by the Middle Haddam Historic District for the area which lies within the district on the west side of the building. Excerpts from the Middle Haddam Handbook read:

*“a “certificate of appropriateness” (COA)... is required where modifications or changes visible from a public way, street or place are considered for any structure within the district”*

*“The state enabling statute defines a “building” as a combination of materials forming a shelter for persons, animals or property and “structure” as any combination of materials, other than a building, which is affixed to the land including but not limited to signs, fences and walls”*

It is my interpretation that a Certificate of Appropriateness would be needed for the retaining wall which is proposed atop the swale.

The Commission also needs to determine the need for a buffer. Section 5.2.E of the Regulation states:

*“In the Commercial Zone, where any lot or parcel or part thereof, adjoins any residential zone, there shall be a landscaped strip, a minimum of fifteen (15') feet wide, consisting of evergreen plantings a minimum five (5') feet tall at time of installation, (revision effective May 15, 2006) forming an effective visual buffer between the commercial and residential uses. Such strip may be in either zone, but the ownership of such strip must be and remain in the same person, persons, firm or corporation as the premise devoted to such commercial use. Failure to maintain this area as an effective buffer shall constitute a violation of these Regulations.”*

**Recommendation:** Approve the Site Plan with the following conditions. 1 – A Certificate of Appropriateness is to be obtained from the Middle Haddam Historic District for the work proposed within the District boundaries prior to commencing construction in that area unless determined to be not required by the MHHD. 2 – The final Mylar should clearly indicate the zone boundary line between the C Zone and the R-2 Zone and the Middle Haddam Historic District boundary line.

## 9. Planner’s Report

A. As discussed at the last meeting, the Commission will need to update the Zoning Regulations before January 1, 2023 in order to remain compliant with the new version of CGS 8-2 adopted in Public Act 21-29. The Town Attorney and I have discussed how to undertake this effort, and although no significant changes are needed, there are “tweaks” that will be needed. I as staff will make redline changes throughout the document section by section. I will present my proposed changes to Atty. Carrella several chapters at a time. Once he has had a chance to review those proposed changes, I will present them to the Commission for your consideration. My goal is to bring you Articles

1-4 in March, Articles 5-7 in May, and Articles 8 & 9 in July. Ideally, a Public Hearing would open on all proposed changes in August or September with final adoption by November.

This update is also a good time to review the regulations as a whole for any changes that are desired. Over the past year or so, we've discussed changes to the Sign Regulation, and changes to the ADU regulation have also been brought up. I'd ask that if any members of the Commission have thoughts, please bring them up as we go.

- B. As you'll recall, the Town Council enacted a 12 month moratorium in the fall of 2021 on the sale and production of cannabis products in the Town of East Hampton. Over the next few months, the Town Manager and I will be working with the PZC and Town Council to determine the best course of action moving forward. I anticipate that a workshop will take place between both the PZC and TC to discuss next steps. The goal of course will be to determine the best path forward and enact proper legislation or regulations before the end of the 12 month moratorium.