



Town of Clinton

Zoning & Wetlands Enforcement Officer

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To: Clinton Planning and Zoning Commission

From: Eric Knapp, Zoning Enforcement Officer

Re: AR 15-219, Douglas Benoit text change application
AR 16-060, Douglas Benoit landing of floating zone application

Date: **June 23, 2016 - UPDATED**

This Section is unchanged from the prior memo. The new discussion starts below.

Since the last public hearing before the Planning and Zoning Commission, the applicant has been meeting with and working with town staff to revise the proposed text. To that end, I wanted to give you my understanding of where things stand and what the remaining issues are.

First, staff has urged the applicant to break the application up into two pieces, for simplicity and to allow each piece to be more clearly discussed on its own merits. The first piece would be made up of Sections 21.1 and 21.2, the sections which allow the creation of floating zones generally. This language is more or less complete and does not, by itself, do anything more than create a tool, floating zones, which could then be used for such purpose as the Commission or any applicant may require.

Let me take a moment to address the concept of a “floating zone” for those members of the Commission who are unfamiliar with it. Traditionally, your zoning map has various zones, broken down typically by uses, residential, commercial and industrial. The Zoning Regulations set forth the requirements for each of the zones on the map. By statute, each zone of the same type has the same requirements. For example, each “R-20” zoning district within Clinton is subject to the same requirements for the size of the lot, 20,000 square feet, setback requirements, uses and the like.

A “floating zone” is one where the Zoning Regulations set forth very specific conditions for what can happen in the zone and under what conditions it can be used, but it is not actually on the Zoning Map at the time of its adoption. Because of this, it is said to “float” over the map, and only can be “landed” in specific locations based on findings made by the Commission that placing the zone in a specific spot is consistent with the Plan of Conservation and Development and the zoning pattern generally.

There has been a lot of discussion about “spot zoning”, so I want to take a moment to discuss what “spot zoning” is and why, generally, the law distinguishes between “spot zoning” and “floating zones”. Spot zoning is a term for the change of zone for a small location in a manner inconsistent with the comprehensive zoning plan. As Judge Fuller notes in his treatise, Connecticut Land Use Law and Practice, 4th Ed., “Size alone is not controlling.” The central issue is whether the “spot” is so out of character with the surrounding area that it is inconsistent with the comprehensive zoning plan.

Because two of the findings this Commission would have to make to land any floating zone are that it would be consistent with the Plan of Conservation and Development and that it would be consistent with the comprehensive zoning plan, the Commission would need to evaluate any floating zone proposal against the standards of spot zoning. The planning consultant can certainly assist you in making these types of findings, but this is a judgment on your part and you have a great deal of discretion.

Since I have been on the job, about a year and a half, there have been periodic discussions about the merits of floating zones. The Regulations presently do not have a mechanism to allow their creation. Sections 21.1 and 21.2 are proposed simply to give the Commission this tool in its toolbox. By themselves they do not change the requirements anywhere in town.

While I have proposed some changes to this text to the applicant, such things as making it clear that if the floating zone expires the underlying previous zone or zones are re-established, these sections are quite nearly ready to be reviewed and acted upon by the Commission. We are expecting the applicant to propose one further round of updated text to address comments received from our zoning counsel, consulting planner and this office. Assuming the revised text addressing these comments is received, and based on what the Commission hears Monday night, the public hearing on this portion of the application can probably be closed.

That brings us to the second piece, the specific floating zone proposed by the applicant, as Section 21.3, now entitled Main Street District – 1. This proposed floating zone would now be allowed in areas of town presently zoned I-1, B-2 and B-3. This makes it clearer the sorts of places within town the applicant is seeking to have a “Main Street District” possibly affect. It may also address concerns of the residents of certain areas of town, specifically Heritage Village, that this could be used in their back yard.

The proposal now has more details, to allow the Commission to gain a better understanding of what it is looking at. There is a minimum size requirement of 60,000 square feet. While this is smaller than the five or ten acre requirements mentioned by commission counsel, it is larger in scale than many, if not most, of the parcels in the B-3 Zoning District. Given its relatively large size compared to other currently configured parcels in the center of town, this may allay concerns about the “spot zoning” nature of the zone.

The “approved locations” section must be left blank until the applicant comes in with a proposal to land the floating zone. As a result, it will be a requirement from this office that the final version of the text leave this section empty at present. The applicant has agreed to do this. I want to make absolutely clear that this text change applicant, by itself, is not changing the Zoning Map ***at all***. Assuming that this application were to be approved, which is entirely up to the Commission, the applicant would need to file an entirely separate application to “land” this zone on the Zoning Map. Specific discussions regarding the merits of whether any particular location in town is a good location for this zone must wait until that application is filed. I urge the Commission to resist the temptation to get hung up talking about specific locations. Those discussions are outside the scope of the present application and will only get the Commission into trouble.

The applicant has proposed actual bulk requirements. It is notable that 80% coverage is less than what is presently allowed in the B-3 Zoning District. The 8’ front setback is much smaller than is allowed in any commercial zone presently, but may be more in line with the realities of Main Street in the center of Clinton. That will be a decision for the Commission to make.

Given the large-scale changes to Section 21.3 and the widespread public interest, the Commission may want to consider keeping the public hearing open on this piece of the application.

June 23, 2016 UPDATE

The Commission is presently reviewing the application by Douglas Benoit to land the floating zone created through the application discussed above, AR 15-219. To follow up from the discussion above, it is useful to review where things are along the timeline.

The prior application was to create floating zones as a concept in the Zoning Regulations and to adopt a specific floating zone, the MSD-1 Zone in the Zoning Regulations. These things have now been done, and the current application and its attendant public hearing cannot alter the prior actions of the Commission to create floating zones generally and MSD-1 specifically. This application is now to place on the Zoning Map the MSD-1 district in a specific location, in the area generally bounded by West Main Street, John Street Extension, the parking lot for the railroad station and Route 81.

As such, the Commission discussion should largely center on the question of whether the alteration of the existing zoning pattern for this location to MSD-1 is generally consistent with the Plan of Conservation and Development and with the land use plan of Clinton. To that end, the Commission is allowed to consider, generally, the uses allowed within the district, but not any specific use. While it has been widely reported that this location is being considered for a CVS pharmacy, that application is not presently before the Commission and would need to be handled by a special exception application filed should this application be approved. I would

urge the Commission not to get bogged down in discussions about a CVS or a pharmacy and to encourage the members of the public to focus on the landing of the floating zone.

I am well aware that there are petitions out there relating to the preservation of dwellings on the properties being rezoned. That issue is only very tangentially related to the application. The property owner has posted the properties in question for the 90 day period required by ordinance and is free to knock down these structures at any time by simply pulling a demolition permit. While the landing of the floating zone may make the filing of a subsequent application possible, and the approval of a subsequent application may result in the site being redeveloped and the structures demolished, the present application is not causing the demolitions. As a result, I would encourage the Commission not to become fixated on the demolition as an issue. The property owner does not need the consent of this Commission to demolish the structures, nor would the Commission's voicing its unhappiness have any legal effect on the owner. The issues are separate.

Because the rezoning of a specific location does implicate the Plan of Conservation and Development, it is valid to consider whether the setbacks, coverage and parking which would be allowed at this location are appropriate. If the Commission feels that a 35' tall building 8' from the property line at this specific location is not consistent with the Plan, that is a valid concern. The Commission needs to weigh the merits of the consolidation of the properties as required to meet the MSD-1 criteria. The Commission can even review the land use pattern which would be established by adoption of the new Zone. All of those are items which fit within the "legislative" decision to alter the Zoning Map.

To follow up with something from the prior memo: the approval of this application does not guaranty any specific use for this location. If there is an application for a pharmacy, it will still need to meet the special exception criteria for that use. And the Commission should not feel that the approval of one or more prior applications requires any subsequent application must also be approved. Each should be treated on its own merits and acted upon separately. The Commission is in step two of what may ultimately be a three step process. (Should the Commission say "no" to this step, then there would be no third step.) It is useful to keep focused on the task before the Commission in the present application.