

**TOWN OF COLCHESTER
PLANNING AND ZONING DEPARTMENT**

TO: Planning and Zoning Commission

FROM: Matthew R. Bordeaux, Planning Director *MRB*

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RE: Follow-up to Large-Scale Indoor Agriculture Proposal

The Commission discussed regulating medical marijuana facilities in early 2020 but did not reach a conclusion that would have resulted in the adoption of a text amendment of the Land Development Regulations (the Regulations). In light of the preliminary application proposal made by CMMD LLC at the January 6, 2021 meeting, the approach to regulating medical marijuana production facilities warrants renewed consideration.

Based on the preliminary application discussion initiated by CMMD LLC, the conversation seems to have evolved into a debate between the direction the Commission was formerly heading with respect to regulating medical marijuana production facilities, to this current discussion around regulating indoor agricultural facilities. We started earlier in 2020 in response to an expiring moratorium on medical marijuana related uses. The idea was that because the state's disposition towards licensing medical marijuana production facilities was akin to our local regulation of industrial (manufacturing/light industrial facility) facilities, it would be easy enough to permit the use subject to special permit approval in the Arterial Commercial and Future Development Districts, where comparable uses are permitted currently.

At the time, the Commission seemed to be leaning more towards regulating the use like an industrial site rather than an agricultural use substantially because of the emphasis on the security concerns considered in the State licensing process.

I think we all believe that in the not too distant future, laws regulating the recreational use of marijuana will become more liberal, and with that it is likely that production will expand. It is also probably safe to say that the State will continue to strictly regulate the licensing of additional production facilities, particularly with a new source of tax revenue in play. But let's just say the State were to open the flood gates on use and production; there's a good chance that local jurisdictions would then seek to take their own response to whatever impacts they perceive marijuana to have on their communities.

At this point, I caution the Commission from overthinking what the State will do from here. What we know is that if someone came in today proposing to grow medical marijuana in an indoor facility, the Zoning Enforcement Officer (ZEO) would respond that the activity is permissible where manufacturing or light industrial uses are permitted currently and in accordance with the standards that apply to those uses. For Colchester, that would be in the Arterial Commercial District and in the Future Development District.

It seems as though, at least amongst the Commission, the traditional stigma around marijuana is eroding, and in fact, it seems like there is a growing recognition of the potential economic development impact of this emergent industry.

Additionally, as certain Commissioners have acknowledged throughout the course of the discussion on this issue, in our climate, to stay competitive (after all, farming is a business) the future of agricultural production may include more indoor growing activity. To expand on that idea, a buzz-word in the statewide effort to preserve and promote agriculture and agricultural lands (the local results of that effort include the proclamation of Colchester as a “right to farm” community) is value-added processing. Both growing and processing of agricultural products have year-round potential indoors.

So if the State is going to thoroughly review the viability and appropriateness of a marijuana production (and the Commission is satisfied with that), then why do we want to limit the conversation to marijuana and not just call it indoor agricultural or manufacturing? So how would that work in Colchester? As it would apply to the Arterial Commercial District or Future Development, it’s a simple fix; treat it as manufacturing or light industrial in those zones. It seems that the Commission agrees that the use is, at best, a questionable fit in the Suburban Use District.

Then conversation gets tricky when we think about the Rural Use District. Section 3.0 of the Land Development Regulations, as adopted in 2015, identifies the primary character of the Rural Use District as follows:

The primary character determinants in the RU are the preservation and enhancement of existing natural resources, vistas, and open space in general. The intent of the district is to preserve rural character. Land uses in the rural use district are not served and have no plans to be served by municipal water and sewer. Agriculture operations are a large presence in the RU District.

The reality of the district, and the intent behind promoting agricultural activities, really boils down to preserving open spaces, vistas, and the traditional agrarian character of an area. I don’t think it would be a stretch to say that the conversation around the preservation and promotion of agriculture in CT and in Colchester would change substantially if / when farmers and growers transition to the development of large, industrial scale growing facilities.

Section 8.9 of the Regulations include provisions for “Farm Buildings and Structures” and “Farm Stores”. It appears that on a parcel exceeding 120,000 square feet (roughly 3 acres), an agricultural building with a footprint totaling greater than 6,000 square feet would be permitted.

So there may be a few different issues at play here.

1. Is the use described agriculture? Is it manufacturing or light industrial? Is it appropriate on a farm and therefore in the Rural Use District? Is it more appropriate where industrial uses are currently permitted?
2. Should the Commission continue down the current path, regulating the production of medical marijuana facilities in zones where industrial activities are currently permitted, or

consider regulating indoor agricultural production, to include marijuana production, in areas where agriculture is currently permitted?

If the Commission were to continue with the approach to regulating medical marijuana production facilities comparable to manufacturing and light industrial, but remain interested finding an appropriate way to accommodate the proposal from CMMD LLC, these are some options to be considered:

1. Floating Zone
2. Large-scale Indoor Agriculture in Rural Use District
3. New Zoning District

Option #1 Floating Zone

A floating zone option was proposed by CMMD LLC for a Large-Scale Indoor Agricultural Facility. This approach serves multiple purposes. First, it provides legislative authority to the Commission in that it requires approval of a zone change, in a manner consistent with CGS 8-3(c), and approval of an associated master plan for the use of a parcel or group of parcels. This means that a Large-Scale Indoor Agricultural operation does not become a permitted or Special Permit use simply because the Commission adopts the new regulation. The regulation only enables an applicant to apply for a zone change where the Commission feels a Large-Scale Indoor Agricultural operation is appropriate. The burden is on the applicant to prove that the use is an appropriate fit for the property and fits in with the area. The Commission therefore has the greatest amount of discretion that is granted by state statute in its review of a proposal. In the case of a floating zone, it doesn't really matter which zoning district the activity is proposed in because the Commission will want to review all considerations that it finds appropriate, such as, but not limited to, consistency with the POCD, surrounding land uses and site conditions, future development potential of surrounding land, impacts on traffic and utility infrastructure, etc.

The other reason the floating zone concept was proposed is that it would allow an applicant to request a phased approach to approval of a project. An applicant may request approval of the zone change and master plan for the concept before making the commitment of the funding necessary to produce plans in the level of detail necessary to get a final site plan approval from the Commission.

Option #2 Large-scale Indoor Agriculture in the Rural Use District

The argument could be made that growing medical marijuana is an agricultural activity (horticulture) and should be permitted consistent with Agricultural Uses as outlined in Section 8.9. In that case, the activity would be permitted in the Rural Use District in accordance with Section 3.2.2 of the Regulations. The argument could also be made that a farm or farmer should have the right to grow and process agricultural products in a large building, consistent with the intent of Town of Colchester's Right to Farm Ordinance.

You might even be able to make the argument that growing and processing agricultural products is permitted now, regardless of scale.

What we know, is that the State of Connecticut has only issued licenses to four (4) production facilities. These facilities resemble traditional industrial facilities and are located in industrial parks. It would be presumptuous to make any inferences regarding the likelihood of the State to issue a medical marijuana production facility license on a farm.

A large-scale indoor agricultural activity, as it would apply to CMMD LLC's situation, would be the principal use of the property, not accessory to a farming operation. Therefore, a large-scale indoor agricultural activity would put into conflict the balance between promotion of farming and preservation of character.

Option #3 Adopt a new zoning district

In its current state, the subject parcel and surrounding parcels do not seem consistent with the intent the Future Development District and are not located on an arterial route. Therefore, I don't think rezoning the parcel as either Future Development or Arterial Commercial would be appropriate. Instead, the Commission may find that some of the existing industrial and public utility uses on Old Amston Road are similar enough that creation of a new zoning district could be considered. The Bloom Energy fuel cell, Eversource substation, and Town of Colchester transfer station and decommissioned landfill don't exactly make the most desirable neighbors so this may not be an area of town with much residential development potential either.

The potential for future development in this area of a comparable or complementary nature to CMMD LLC's proposal is unlikely however, simply based on available land and physical attributes of the landscape. Therefore, the Commission risks amending both the regulations and map for a project that could never happen.

Conclusion

Circling back to the Floating Zone approach, should the Commission approve a project for a given parcel and that project were never to commence, the proposed regulation includes a provision that the zoning district would revert to its underlying designation when the approval expires.

Given these three options (and admittedly, there may be more to be considered), the Floating Zone option appears to satisfy the desire of the applicant, give the Commission the greatest degree of oversight, allow additional applicants, particularly those with existing agricultural operations, to apply where appropriate, and comes with built in provisions to revert back to the original designation of the zoning map should a project not happen.

If the Commission likes the project and finds, on a conceptual level that the location is appropriate for the use, I recommend the Commission advise CMMD LLC to make the application for the Large-Scale Indoor Agriculture. The Commission will then have an opportunity to thoroughly review the proposal and receive feedback from the public in a Public Hearing setting. The Commission may also wish to refer the regulation amendment proposal to the Agricultural Commission and Economic Development Commission for their input as well.