

**NOANK ZONING COMMISSION
NOANK FIRE DISTRICT
10 WARD AVENUE
NOANK, CT 06340**

Approved Minutes of the Regular Meeting

Date: Tuesday, April 20, 2021
Location: Zoom Meeting

Consistent with Governor Ned Lamont’s directives on the use of remote meeting technology during the coronavirus pandemic, the meeting was held on Zoom and is available at the following link:

<https://www.youtube.com/playlist?list=PLp4s6RQGCh5T9l68DGPVVGpN4hWxQgRqQ>

The supporting documents for the meeting can be viewed at the following link:

<https://1drv.ms/u/s!ArWm4wCa4MFlxmbM2wa1a2JhG8bx?e=ZQogzD>

Commission Members present:

Rick Smith, (Chair), Beth Steele (Vice Chair), Dana Oviatt, Blake Powell, Art Tanner, Alternate Member Larry Dunn and Alternate Member Lynne Marshall.

A. Call to Order: The meeting was called to order at 7:00 pm

B. General Comments: Issues not in the agenda: None

C. Application for Design Review:

1. Consideration of application of David Kennedy for a Certificate of Design Appropriateness to install a 14’x24’ shed at 124 Brook Street

Application Presentation

Before taking questions from Commissioners, Chairman Smith shared information provided to him through an email from Bill Mulholland on the issue of setbacks, which are not clearly demarked on this presentation. Chairman Smith read the email into the record as follows:

“I spoke to the applicant and checked the file. The site plan which he submitted for my review and approval did not have the setbacks delineated on the plan. However, I called him and discussed the issue. He is proposing a 10’ rear and side yard. The code requires 6’. It allows for an additional 2’ in height for each additional 1’ in setback. His building is approximately 14’ therefore it will comply with height and setback.”

Chairman Smith asked if there were any questions from the Commissioners. None noted.

Action: Motion (Steele/Oviatt) to approve based on the potential impact on neighborhood architectural harmony and character, property values, historical integrity and/or public health and safety, the level of review deemed appropriate for this application is a site plan review under Section 2.26.6.5, and to both waive all specific submittal requirements that are not included in this application because they would not aid the Commission in its determination of the application's compliance with Section 2.26 and to accept the application submitted as complete, and to approve the application of David Kennedy for a certificate of design appropriateness to install a 14'x24' shed at 124 Brook Street because it meets the criteria set forth in Section 2.26 of the zoning ordinance for the Noank Fire District.

Chairman Smith asked for discussion on the motion

Commissioner Tanner brought up that, yet again, this application does not meet the NZC requirements because there are no photos of buildings that are on property that is within 200' of the property under proposal and while the NZC regulations don't require a site plan with more detailed information that this one has, he thinks that whenever there is an application submitted proposing buildings being added to a property or the footprint of the building is being changed, there needs to be a reasonable plan for the permanent record which shows all changes that are being made.

Chairman Smith agreed with Tanner that the instruction sheet needs to be made clearer so applicants are aware that what is required is that photos of structures on any lot, any part of which lot is 200' from the boundary of the subject property, need to be included, even when the structure on the adjacent property is more than 200' from the boundary of the subject property. Smith suggested setting some agenda time at a future meeting to discuss this further to be certain that all agree to what the instruction form actually says and he also thought that having the site plan was a good idea.

Smith then informed everyone that ZEO Bill Mulholland had a major medical event about a month ago and after being hospitalized, is working shortened hours on his day job and that while he is responsive to NZC emails, he is in recovery so Smith has been taking on some of Bill's tasks.

He then added his view that, in the particular case of the Kennedy application, he would not need additional information to influence his view and he would support the motion because of that general waiver authority that the Commission has that states "the level of review deemed appropriate for an application received by the commission is within the sole discretion of the commission."

Commissioner Oviatt asked if the purpose of the site plan was to determine where on the property the proposed structure is to be located.

Smith stated that yes, with relation to the property boundaries and setbacks.

Commissioner Tanner added that a site plan also shows the orientation of a house on the property, which provides a better sense of which sides of the house or building in question face the street or a navigable waterway, which are the two viewpoints that we are supposed to be taking into consideration when we consider the architectural suitability of the proposal.

Chairman Smith asked for other comments or questions on the motion. None were offered.

Roll Call Vote:

Beth Steele	Aye
Blake Powell	Aye
Dana Oviatt	Aye
Nip Tanner	Opposed (not because of the application, but because of the process)
Rick Smith	Aye

Approved (4:1)

2. Consideration of application of Peter J. Springsteel on behalf of Naples Marketing and Development for a Certificate of Design Appropriateness to remodel and convert a two-family dwelling to a one-family at 39 Front Street

Application Presentation

(Commissioner Tanner recused himself from the discussion due to the proximity of his property to that of the applicant)

Chairman Smith noted that there was still a quorum so an alternate need not be seated.

Chairman Smith asked if there were any questions from the Commissioners.

Commissioner Oviatt asked if the proposed front deck replaced a deck that was pre-existing.

Peter Springsteel noted that there was a deck on the south side of the building with a stairway which was to be removed and a deck would be added to the front of the building.

Commissioner Oviatt asked if the house has to stay within the original footprint.

Mr. Springsteel stated that he did a calculation of the lot coverage and concluded that the total allowable square footage is 923 square feet, based on the NZC ordinance.

Chairman Smith interjected that, in order to avoid confusion, the allowed square footage is, in fact, 1,923 square feet, not 923.

Mr. Springsteel noted that the lot coverage calculation for the proposed plan is 914 square feet, which includes decks, the garage addition, canopy overhands, etc.

Chairman Smith once again noted that the lot coverage calculation for the proposed plan is actually 1,914 square feet, not 914.

Commissioner Powell asked if the survey submitted by the applicant and completed by Fedus Engineering, showing the flood zone lines is relevant or not with respect to the FEMA rules.

Mr. Springsteel answered that, although a corner of the building is in the AE elevation 10 zone, all of the living spaces are above that elevation making the proposal compliant with the FEMA Regulations.

Commissioner Powell asked if he was correct in his understanding that even if the footprint is over the boundary, as long as the elevation of the building at that footprint is above the elevation that the FEMA rules require, there does not have to be compliance.

Mr. Springsteel stated that there does need to be compliance because the property is located in the flood zone; however, by virtue of the fact of where the building sits and given the height of it, they have compliance with the FEMA Regulations. There is nothing further that needs to be done to the building to make it comply.

Discussion took place between Commissioner Powell and Mr. Springsteel concerning prior projects in flood zones that Mr. Springsteel had been involved with in the past and compliance with the FEMA Regulations.

Commissioner Smith noted that the site plan line is within the setback line for the garage and Mr. Springsteel confirmed. Smith also asked for confirmation that, with one structure being removed and a garage added, the plan still conformed to the regulations with respect to lot size allowance. Mr. Springsteel confirmed this fact.

Action: Motion (Steele/Powell) to approve based on the potential impact on neighborhood architectural harmony and character, property values, historical integrity and/or public health and safety, the level of review deemed appropriate for this application is a site plan review under Section 2.26.6.5, and to both waive all specific submittal requirements that are not included in this application because they would not aid the Commission in its determination of the application's compliance with Section 2.26 and to accept the application submitted as complete, and to approve the application of Peter Springsteel, on behalf of Naples Marketing and Development for a certificate of design appropriateness to remodel the exterior of a home and demolish a shed and construct a garage at 39 Front Street because it meets the criteria set forth in Section 2.26 of the zoning ordinance for the Noank Fire District.

Chairman Smith asked for comments on the motion. None were offered.

Roll Call Vote:

Beth Steele Aye
Blake Powell Aye
Dana Oviatt Aye
Rick Smith Aye

Approved (4:0)

Chairman Smith asked Commissioners if they had an interest in scheduling time during the May 25th agenda to discuss the issues on the NZC instruction sheet for design appropriateness applicants or if they would rather Smith work ZEO Mulholland to better capture what is required.

All indicated they would support Chairman Smith and ZEO Bill Mulholland working on the document to provide clarity for applicants of what is required.

Commissioner Tanner mentioned that he felt it would helpful if the instruction sheet included guidance on how applicants can access the GIS Portal on the Town of Groton website, which would provide property maps that can be printed out with properties within the 200' boundary set forth in the ordinance. Commissioner Tanner volunteered to write up this portion of the document for inclusion in the finished instruction sheet.

Chairman Smith commented that he felt that would be very beneficial and asked if Commissioners had any disagreement with Commissioner's Tanner's suggestion. None was noted.

Chairman Smith: The Town of Groton GIS Portal instructions will be added to the document.

D. Review of Minutes:

03/16/21 Regular Meeting Minutes - Approved without objection
03/23/21 Special Meeting Minutes - Approved without objection
04/08/21 Special Meeting Minutes - Approved without objection

E. Zoning Enforcement Officer Report: March 2021 – Approved without objection

Chairman Smith then suggested a change in the order of the agenda, suggesting New Business: SB 1024 "An Act Concerning Zoning Authority, Certain Design Guidelines, Qualifications of Certain Land Use Officials and Certain Sewage Disposal Systems" be discussed prior to discussing the STR process.

New Business:

Noting no objections, Smith began the discussion by introducing Senate Bill 1024 and the possible implications it would have on Noank, including limiting zoning authority of local municipalities as well as an “as of right” provision stating that every single family home in a municipality would have the right to have one apartment and the municipality would have the right to regulate short-term rentals and a provision limiting the ability of a zoning commission to require more than one parking space for each in-house apartment. Smith commented that he had no problem whatsoever with the goal of the bill, however, he did have concerns with the approach.

He asked if the Commissioners had any comments or if they just wanted to take his comments as information passed on. No comments were offered.

F. Old Business:

1. Consideration of Final Draft of Proposed Ordinance on Short-Term Rentals
2. Consideration of Process for Obtaining Public Input of Short-Term Rentals

Chairman Smith informed the Commissioners that Counsel Casey had only one very minor change, that of the citation number on one of the measures in the application materials. He also asked Commissioners Dunn and Oviatt to comment on the discrepancy in the numbers of STRs mentioned at the last meeting in order to clarify the discrepancy.

Alternate Dunn explained that the point in time as well as the algorithms used by at least one of the companies to look over history, says on week “x” the STR was in the system, on week “y”, it wasn’t. He also explained that if an STR was not advertised at the time of the calculation, it would not have been included in the count. He suggested the difference was likely an issue of refining definitions, e.g. the total number of units that have, at any point in the last six months, been a STR relative to the ones that are currently being advertised as STRs.

He went on to explain that the more conservative number would be the one that Commissioner Oviatt came up with which says, “when you look at the snapshot today, here’s what it says.”

Commissioner Oviatt added that he felt that if someone were to ask him how many STRs there were in Noank, the more accurate number would be the number he calculated, 26 or 27. He stated that his calculations came from looking at each and every platform and figuring out how many people were renting. He said he felt that perhaps the companies’ figures may have been higher because they were over-counting, using areas of Groton Long Point or some adjacent areas, or perhaps multi-counting because people who are running STRs are advertising on more than one platform.

Chairman Smith said he could take that as meaning the number will be refined over time and it could be between 25 and 40, however, the number is somewhat irrelevant if the Commission remains committed to the fact that short-term rentals are a concern and they need to be regulated.

Chairman Smith introduced two subjects for the next discussion: approving the Draft of Proposed Ordinance document and process for obtaining public input of STRs.

Commissioner Oviatt stated that his opinion has changed in the last 2-3 weeks and he would like to force discussion about whether a workshop should take place before a public hearing. He went on to say that one assumption for having a workshop seems to be that if the Commission explains to the public the rationale and background of the document, they will be more receptive to the proposal and also that having a workshop will elicit helpful comments and constructive criticism and alternatives to the way the present document is written. He feels it is unlikely that the public will be swayed over any explanation from the Commission. He stated that the public has had a chance to listen to the commission's deliberations over the past 2 years and many letters have been received by the commission from the public. His concern is that from the tone of the letters, people have "made up their minds about whether they want regulation or not" and although there have been two letters that have called for a compromise, neither offered suggestions as to specifically how such a compromise would be accomplished. He's not sure that the "tenor of a workshop will change in any way from the tenor of the letters we've already received." He also felt that if the commissioners agreed to substantially change the document at this point, it would take many months to get it finalized.

Action: Motion (Oviatt/Steele) to dispense with having a workshop and proceed directly to having a public hearing.

Steele noted that her second was "for the purposes of eliciting discussion."

Chairman Smith asked for discussion on the motion.

Commissioner Powell commented that he felt Commissioner Oviatt raised a good point and noted that Oviatt had used the term "workshop" which was the term initially used by the commission but that lately, it's been referred to as a "public meeting for public comment." He stated that he felt the idea of a workshop had merit if it would allow the commission to craft a regulation that balanced the different opposing views in a fair way; however, if it's not organized and moderated correctly, he doesn't feel it will be valuable. He also stated that he had concerns about the Zoom format and how effective and fair it would be to do a workshop via Zoom. He agreed with Commissioner Oviatt that going to a public hearing at this point would be best.

Commissioner Steele commented that she can't imagine that the input received at a public workshop would be substantially different than the letters that have already been submitted. She is also concerned about having a workshop turn into a "complaint session" with no

constructive criticism given by the public. She went on to state that she feels Commissioner Oviatt makes a good point that the public is entrenched on these issues and she also feels some of the commissioners are also entrenched in their views, making her feel it's not going to make any difference at all having a public workshop and that, in fact, maybe going straight to a public hearing would be the right move.

Commissioner Tanner commented that although he hadn't read through each and every piece of correspondence received, he did read through the most-recent and developed a spreadsheet to capture the primary message of each one and his feeling at this point was that what's been heard is from "people and their friends who are operating short-term rentals in violation of our regulations, with only a couple who were in support of our efforts to rein in those operations that are in violation of the regulations." He felt there was a much larger number of people who hadn't submitted comments yet but who were very concerned about STRs and he had informed them that they would have an opportunity to voice their opinions and comments at an upcoming workshop. He felt that if the proposed draft document went out to the public and the Commission invited comment, many more might come out to speak and the Commission would have a "different perception than it has today about how the public feels about where we are based on the fairly one-sided set of communications that we've already received." He said that going straight to a public hearing and getting feedback at the point that they could have gotten at a workshop wouldn't allow the chance for modification and the Commission would be back where it was three years ago. He felt there is value in holding the workshop.

Alternate Marshall commented that she thought that because the public had been led to believe they would have a chance to provide input at a workshop and since it provided the opportunity for the commission to talk about the goals of the regulation, she would favor a workshop. She also noted that many of the letters received from the public have factual errors in them and those could be "cleaned up" at a public workshop. She felt that the public should be informed that in order for the commission to consider any suggested changes to the regulations, they would have to agree with the commission's goals.

Alternate Dunn agreed with Commissioner Powell's concerns about the Zoom format for the workshop. He stated that he agreed that there were people who hadn't participated in submitting input yet and that having a workshop would provide advertising, communication and the ability to get the word out. He also agreed with Alternate Marshall's comments concerning the management of the workshop and the importance of the commission letting the public know that they are looking for specific rather than generic input. He commented that "having a crafted workshop would add value given the lengthy time we've invested."

Commissioner Smith stated his concerns that "if we don't have an informal public input session of some kind after months of saying we're going to do that so people would have a maximum opportunity to influence the outcome which they won't have in a formal public hearing process, we'll be pilloried and rightly for pulling the rug out." He did not support going directly to the public hearing. He said that the commission was ready to entertain comment as opposed to

round tabling so if a workshop means going back to a roundtable, he would want to avoid that. He feels it's valuable to tell the public what the commission wants them to comment on. He said he's aware that many commenters will state that they do not want regulation; however, he feels the commission has moved on from that position, gone through the planning effort because it thinks there is a threat and the Commission is authorized as elected commissioners to deal with such things by zoning if there is a way to do that." He urged the commissioners not to make any decisions, even on the type of meeting they will have, based just on the correspondence received. He agreed with Commissioner Tanner that there were likely to be many others that want the opportunity to comment and with Commissioner Oviatt that it would be very important to get the word out as broadly as possible. He stated that the letters received are a good expression of the views of the writers of those letters, but they have nothing to do with the public input process because the commission has not announced to the whole public that they're soliciting comment on this proposal.

Smith went on to say once there is an announcement to the whole public that the commission is soliciting public comment on the proposal, that starts the clock on comments. He favors the idea of structuring the workshop and telling commenters to direct their comments to the provisions. He stated that he opposes the motion because he thinks it would defeat the purpose of soliciting objective public comment.

Commissioner Oviatt said he felt that Commissioner Smith made a good point that the commission would be pilloried if the workshop didn't take place since people were expecting it. He also agreed with Alternate Dunn's comments that it's a good idea to get as many people to participate as possible.

Commissioner Oviatt requested to withdraw his motion, the seconder agreed and the motion was withdrawn.

Chairman Smith discussed the components of a rough straw man proposal for soliciting informal public input on STRs. One issue would be to get the word out to Noankers, another being a timeline for the process. He stated that he didn't see the possibility of having the public meeting before early June if a justification were going to be provided. He reminded the commissioners that Counsel Casey has advised them not to answer letters individually, but that the time for this would be at a public meeting where questions would be answered in the form of a justification, which would explain to the public what the Commission was proposing, why, and providing some level of answers to some of the repeated questions that have been asked. Smith felt this justification would take a few weeks to develop, in order to be a document that is agreeable to all of the commissioners. He said that May is blocked by the annual meeting and then a regular NZC meeting on the 25th. He saw the only way to have a public meeting before early June would be to forego the justification. He felt there would be many irrelevant questions asked and, currently, he favored dealing with them in writing rather than taking up valuable meeting time to discuss them.

Chairman Smith then asked commissioners for their views concerning the schedule and how to deal with the justification.

Commissioner Oviatt spoke and asked for an operational definition of justification, of what could be included.

Chairman Smith gave examples of questions that the public has been asking that they haven't received answers for from the commission such as the reasons for the regulation and answers to complaints, all of which Smith feels could be answered in a written justification document. He did tell the commissioners that Counsel Casey informed him that the commission would be justified to be proactive in developing an ordinance for STRs even without one complaint from the public. Smith noted that zoning rules had to regulate uses, not users so if an activity was a concern anywhere and it could happen anywhere, The Commission was justified in drafting a regulation to account for that possibility.

Alternate Marshall agreed with Chairman Smith.

Chairman Smith asked if everyone agreed that it doesn't look like the public meeting would happen before the first week of June and that the only way not to do that is to ignore the need for the justification. Alternate Marshall stated that she is in favor of the justification and that the first week in June is fine with her.

Chairman Smith asked whether anyone disagreed. No disagreement was offered.

Chairman Smith made suggestions for the public meeting of allowing 3 minutes per speaker, more time for someone representing clients, and setting date limits for the submission of written comments.

Chairman Smith asked for views on these suggestions.

Commissioner Powell said that he felt using the terminology "comments of people for and people against" isn't going to be helpful in providing specific information about the regulations. Chairman Smith asked if it would be better to take comments from all those in favor followed by all those opposed or allow comments to be randomly made as people raise their hands to speak. Commissioner Powell said that he would prefer to hear comments that are specific to the regulation.

Alternate Dunn added that normally in public sessions, there is a sign-up list and comments are taken in sequence and that only those who have signed up are able to speak. He also stated that he favored giving guidance that explains the feedback the commission is seeking to provide a reference statement in the ordinance to each comment. He agreed to 3 minutes being allowed for each commenter.

Chairman Smith asked if anyone disagreed with those views. None disagreed.

Chairman Smith asked if there were any other comments before the Commission moved on. None were offered.

Chairman Smith: Moving onto the justification and how we get the word out.

Commissioner Steele suggested posting a notice at the firehouse, having people send their email addresses to the clerk so it can be added to the master list for notifications. She also suggestions posting at various points in town, the park, Carson's, the marinas, etc. Commissioner Smith agreed.

Alternate Dunn added that he would propose and volunteer to coordinate putting a notice on the Town of Groton's website in the News section that announces the meeting, a link to documents on the OneDrive, etc. He also stated that The Day Newspaper will be doing an article or perhaps a series of articles on the topic of STRs and he feels that will also generate interest in a public meeting, if we were to participate in the article(s) and provide dates.

Chairman Smith stated that Counsel Casey has advised that the Commission not submit an article to the newspaper because we are the applicant in this case and anything we give voice to needs to be informational only.

Chairman Smith went on to state that he had some concerns with the newspaper approach and even the town website being used to announce the meeting. He felt it would be very important that comments come from Noank residents and property owners and those two means of notification would be reaching people outside of Noank who may want to speak. He then asked the commissioners if they agree that it should be residents and property owners of Noank and representatives thereof who are the ones that get to comment. All agreed.

Chairman Smith commented that he would be seeking Counsel Casey's thoughts on utilizing newspaper coverage and how to participate without putting the commission in a position to be criticized.

Alternate Dunn noted he didn't intend to suggest that Chairman Smith provide an interview to the newspaper. He said that if they were to use the town's website, they could mention that all are allowed to listen to the public session; however, only residents and property owners of Noank would be allowed to comment.

Chairman Smith asked for other comments.

Commissioner Tanner agreed with Alternate Dunn and other commissioners' suggestions about getting the word out as broadly as possible and he agreed that the notice should state that we are accepting input only from Noank residents and property owners. He also agreed with the

use of a sign-up sheet, which he thinks would facilitate filtering out those who do not have a legitimate right to participate under those rules.

Chairman Smith said that in lieu of waiting for minutes, he was going to be working on making up a list, which will be sent as a staff draft, of his recollection of this discussion and notes he took of the things discussed and would get it out to Commissioners for corrections.

Chairman Smith then moved on to a discussion on the nature of the justification. He noted that when he spoke with Counsel Casey about the matter, he said that, normally, such things are discussed and debated in public. Smith felt this would not be the most effective way to draft a justification. Instead, he suggested making a good faith effort himself to put something together and get it out to Commissioners and they could respond with whether they agree with what's proposed or if they would like to debate it in public. The approach of not debating in emails, but just saying "yes" or "no" would be consistent with Counsel Casey's view of how the laws are intended to work with respect to FOIA and zoning commission rules. If the Commission wished to debate the draft after seeing it, it would be debated in a public meeting.

Chairman Smith asked for views on this approach.

Commissioner Powell stated that he agreed with Chairman Smith drafting a justification.

Commissioner Tanner commented that because Chairman Smith has done well to balance different points of view in other situations of the NZC, he agrees that Chairman Smith should move forward so long as "this preamble includes mention of issues that we've heavily debated and come to a decision on but don't necessarily represent what our final decision will be after we go to the public," acknowledging in it that we are trying to balance a variety of considerations and mention all of those considerations.

Chairman Smith asked if there was any disagreement with that approach. None was noted.

Alternate Dunn asked if he was to go ahead with pursuing the option of putting a notice up on the Town of Groton website at the right time.

Chairman Smith asked the commission's view. All agreed this would be worthwhile to pursue.

On a matter of other business, Commissioner Oviatt asked what the policy is, when people make an application to the commission to make changes to their home, for the public to have input on the application. Specifically, did the public have the right to comment on an application before the commission voted to approve the application.

Chairman Smith stated that, if he understood the question correctly, and what he has heard ZEO Bill Mulholland say in the past, when a two-family home is being converted into a one-family home, you don't have to seek approval from the Commission but if you go the other direction

(single family to two-family), you do. Because of the way the zoning regulation is written, you can't just make a one-family unit into a two-family unit without meeting certain criteria and Smith suspected such a request might trigger a public meeting or public hearing.

Commissioner Oviatt asked if the public has the opportunity to speak during the adjudication process of NZC applications for zoning permits.

Chairman Smith answered saying if the application to do interior remodeling and change from a two-family to a one-family required zoning commission involvement and public input, Bill Mulholland would have denied it and sent it to the commission.

Action: Motion to Adjourn (Powell/Steele)

Approved 5:0

Adjourned at 8:59 PM

Recorded by: Susan Weber, Clerk