

ZONING COMMISSION  
NOANK FIRE DISTRICT  
10 WARD AVE  
NOANK, CT. 06340

Minutes of the Regular Meeting

Date: Tuesday, December 21, 2021

Location: Noank Fire House, 10 Ward Avenue, Noank

A. Call to Order, Roll Call: The meeting was called to order at 7:00 PM. Members Present: Dana Oviatt, Beth Steele (Vice Chair), Rick Smith (Chair), Blake Powell, Arthur Tanner; Alternate: Hansina Wright; Others: Elizabeth Yerkes, Clerk.

A link to the recording of the meeting is: [https://1drv.ms/u/s!ApV\\_BVCbHuQwsxpdkpYNV7LTsf6-](https://1drv.ms/u/s!ApV_BVCbHuQwsxpdkpYNV7LTsf6-)

Chairman's Remarks: An update to the Noank Zoning Ordinance is nearly finished. The update corrected scrivener's errors, agency name changes and formatting. Counsel will be reviewing changes for appropriateness; possibility of some text changes. It is likely that an Omnibus Text Amendment may include some of the commission's proposed changes such as the FEMA look-back issue and Cannabis issues, and possibly, amendments to ADU language prompted by PA 21-29.

The Freedom of Information Act (FOIA) allows a member to participate remotely by audio. The Chairman noted that he will participate in this way in February and March. If a workshop or Public Hearing happens during the Chairman's absence, he will not participate and Alternate Hansina Wright will be invited to be seated as his replacement. The reason is that the public needs to be able to interact with a member who is participating remotely during a hearing (i.e. offering questions and providing answers) and, without being in a Zoom-based meeting, this is not possible in Noank.

B. Public Hearing: None.

C. Public Comment for Issues not on Agenda:

Stan White, 47 Front Street, spoke about the re-built house at 39 Front Street. Mr. White asked that the public be allowed to comment in the future on proposals during the design review process. White said that a few of the architect's photos that were presented were more than 12 years old. "The architect didn't show you what was going on....The house that was built does not fit in with Noank at all. The landscaping is gravel...the (exterior) lighting doesn't fit in with the neighborhood. And the public wasn't allowed to comment. I don't think the commission considered what was going on outside of the the house."

Commissioner Tanner responded that since that time, the commission has been guided by attorney advice to not allow public input except for a public hearing. "We've become strict about it," he said, which created the problem that Mr. White is raising. However, if public comment were included in every design review it would create a public hearing out of every proposal.

Chairman Smith said design review is meant for the five elected commissioners to determine appropriateness. Members of the public might think a proposal is inappropriate and they are entitled to their opinion but the Commission is charged with making the determination. The Commission did. It's in the eye of the beholder. Some may disagree with a plan. Others may love it.

Commissioner Oviatt said neighbors have a vested interest in properties that come up for application. Neighbors may have insights that nobody else had thought of. "This picture (of 39 Front St.)" Oviatt said, "is

not something I thought I was voting for, let's put it that way." Chairman Smith noted that it looked like the Commission was now running a public hearing and attempted to move on.

Commissioner Steele asked about the posting requirements in the ordinance for design reviews. The Chairman said yes and reminded the Commission that a speaker some months back had asked that the signage requirement be adhered to. The Chairman had reminded the ZEO of this requirement and provided a new sign and he believed it was now being given out to applicants but he agreed to check again.

Oviatt asked about notification of neighbors but he was reminded that when he had to do this step it was because he needed a variance.

The Chairman asked again that the Commission not run a public hearing on the issue. He repeated that the public can always submit e-mail comments on a design listed on the agenda, and that those comments become part of the public record.

Chairman Smith asked ZEO Mulholland if there was a way to have an abbreviated public comment period on a design review without all of the notification requirements? Mr. Mulholland responded that the Commission would end up running a *de facto* public hearing without publishing the required legal advertisements and the Commission could end up in legal jeopardy. He added that if the Commission ran every meeting as if it were a meeting for a special permit, then a public hearing might be required. He suggested this would be time-consuming and that it was a good question for counsel. He suggested it would slow down the process. One of the questions is a legal question but he also wondered whether the Commission wanted to expend the time (that is, to do public hearings for numerous applications). He reminded the Commission that the design review process is a hybrid process and is still being debated in many communities even though they feel it is in their best interests to do it. He noted Counsel has advised that the Commission would be running a *de facto* public hearing without the legal responsibilities. He also noted that he did have the new posting notice.

Commissioner Powell asked if there's anything preventing public comment being submitted by e-mail prior to a meeting. Mulholland cautioned that FOIA requests can reach into personal e-mail. Smith clarified that if public e-mails comment to [nfdzoning@gmail.com](mailto:nfdzoning@gmail.com), those comments are distributed to commissioners before a Zoning Commission meeting and the public is always entitled to them. He was still concerned that the Commission not be viewed as running an illegal public hearing.

Commissioner Steele cited Regulation Section 2.26.2 and others, noting the Commission is supposed to look objectively at the criteria in the design review section and determine if the project comports with them. She felt the Commission is not supposed to judge applications as to whether commissioners think they are aesthetically pleasing. Steele questioned the probative value for the Commission of allowing the public to make aesthetic value judgements on a design in a public hearing.

Commissioner Oviatt suggested that the Commission never asked about the landscaping for the 39 Front Street project. "Landscaping is in our purview, per our regulations. We missed that." He said that if someone had been allowed to alert the Commission, the Commission "might not have made that mistake."

The Chairman noted for the record that, whether a mistake was made or not, a lot of this is in the eye of the beholder. He will discuss with Counsel to see if there's a way to allow some public comment.

Commissioner Tanner asked about the recent email from the Fire District that suggested Executive Committee agendas would no longer be emailed, just put on the fire district website. Smith had followed up and found that enough people had expressed a concern that the District Clerk would continue to mail them, as a benefit to the community. The Noank Fire District website will continue to post Agendas and Minutes at [Noank Fire District \( https://noankfiredistrict.com \)](https://noankfiredistrict.com).

Lynne Marshall, 118 Pearl Street spoke about the posting of design review notices 15 days before and 15 after a design review meeting. She asked how the public is able to comment after seeing such a posted notice. She asked the ZEO of Stonington how public comment is included in meetings. The ZEO, Ms. Marshall said, told her that Stonington's Planning & Zoning Commission will allow a neighbor to comment informally but they tell them it is not a public hearing and they don't have to let them comment but they do allow them to comment informally. Marshall then commented further on the 39 Front Street application and began to point out the discrepancies in the proposed and as-built designs relative to other houses on the street.

The Chairman reminded Ms. Marshall that, as a former commissioner, she knew this part of the agenda was for the public to introduce issues not otherwise on the agenda. He noted that she was commenting on the design of a house as if it was a public hearing, on an application that had been approved months ago.

Ms. Marshall reiterated her feelings that the house was inconsistent with others in the neighborhood and inferred that the Commission was not doing its job properly and should get an architect to advise it.

Hansina Wright clarified that it was Stonington Borough's design review process that she and Ms. Marshall inquired about. She said she no longer sees consistent design review notice posting in Noank. The notices, she said, "give the public (and neighbors) an opportunity to say 'Yes, great, or ask questions' ...and that was done during the design review process." Ms Wright said she found it helpful to see how Stonington borough continued to run design review because Noank borrowed some of its protocols. She suggested Noank go back to review the things in our process that were previously approved.

D. Applications for Design Review: none

E. Informal Discussion of a Proposed Site Plan for the Noank School/Community Garden:

Presenters Mark Berry, Director of Groton Parks and Recreation, and Brian Kent, landscape architect of Kent + Frost LLC spoke. Mr. Berry said "we feel the (proposed changes) will only enhance that existing space." Adding pathways and signage, Berry said, will allow "more connectivity." He said that for those in wheelchairs or with walkers, "that particular park is not very accessible...we're trying to make it accessible to a greater variety of people." A planting plan of native trees and grasses, and addition of a "nature-based playground" are other changes.

Mr. Kent summarized the existing open space and the planned changes.

Paved loop walkway: A paved pedestrian walkway would begin at top of Smith Lane; pavement would be removed from the former school handicap parking area and curbs, and be replaced with a new, 8-foot wide bituminous/asphalt walkway that would connect to the existing 8-foot wide path that terminates at Harbor Court. The loop walkway would run north across the Christmas tree grove to the Williams St. sidewalk, and down to the eastern corner. Then, it could continue a loop to a new 6-foot pathway that would bring the person back to (Smith Lane), the starting point," where an entry sign would be posted..."like a small kiosk with a gable roof over it."

Apple orchard relocation: Kent said "the (apple) orchard section...which should really be a more active area (is) where the playground is proposed and more open lawn is proposed." He said the apple trees would be moved to an area beyond the community garden; its eastern-facing open slope, he said, is ideal for an orchard because it lacks turf grass. A deer-proof fence may be installed. "The stewards of the (community) garden," Kent said, "can also take care of the orchard."

The fence-line would remain unchanged.

Service area and gravel drive: “Rather than... approach the (community) garden in your vehicle from any location, we would delineate a service area on the south end of the garden...a gravel drive, and within this area, Parks & Recreation could maintain stockpiles of mulch, soil, compost..(for the community gardeners’ use).”

Benches on paved walk: Benches would be placed along the paved walkway. Rectangular seating areas would be built beneath mature hardwood trees near the community allotments.

Planting plan: An oval-shaped landscaped zone has already been planted with dogwood, black gum, hawthorn and other hardwoods in the area where salvaged Noank school bricks created a planter. The planting scheme calls for more hardwoods, including oak, around the open space perimeter and near allotments.

Designed garden: Kent + Frost LLC plans to design a circular garden on the western side, 40-foot diameter. “What we’re proposing for this permitting process would just be a low-maintenance garden” without flowering plants. There would be benches around a circular garden. One of those would be the existing memorial bench - a black granite bench dedicated to a teacher that taught at the school that passed away - and it could be re-located there. And this could really be more of a sustainable garden space...it could be a healing garden space, or could be left open for additional persons to be memorialized in the community. Kent added that the designed garden would be surrounded by native plants and grasses, more like a perennial wildflower garden whose maintenance would consist of an annual mowing.

Christmas tree grove: the ultimate outcome of the Christmas tree area is to harvest and donate trees to people who could not afford one. Berry said nine trees were donated in 2021 to Groton Human Services’ clients.

Sledding hill, rain garden: Kent mentioned that the turf grass hill would remain sled-able, and that the function of the rain garden/depression would be re-established with a permeable bottom and native plants. The school brick planter, with a little TLC, could remain.

Garden watering system: A shallow water pipe will be connected; and the garden hydrant will be put at the garden.

Public toilet: A portable toilet is proposed. It would be connected to the (paved loop) walkway and enclosed by a (6.5-foot, U-shaped) fence. Arborvitae will screen it from the southerly neighbor. This location allows a pump-out truck to access it from the Smith Lane driveway.

Lighting will remain unchanged.

Parking: Mr. Kent said that the end of Smith Lane will be cut, asphalt removed. Two handicapped spaces are proposed. Existing pavement will be re-striped. Everything about this will be ADA-code compliant except the gradient (2 per cent). He said that waivers are typical. The total of 29 parking spaces is about as many as Haley Farm has, adding that the long Williams St. parking lane, originally for school buses, could be marked off as well for added parking.

Mr. Berry noted that no programming is identified for the park.

Commissioner Steele asked about the service area; specifically, shielding mulch and wood chip piles from neighbors. Kent replied that dense scrub remains a high, natural screen. Ten and 15-foot high shrubs, that could be complemented by evergreens are growing in the rain garden.

Berry said, Whatever we put (in the 'service area') would be used specifically on a seasonal basis for the gardeners only and not stockpiled for town or other use.

Tanner suggested a duplicate sign on Williams St., so that people walking to the facility that way see whatever the sign says. Berry agreed.

Smith summarized new things: move the apple orchard, add a healing garden, add new playground equipment, add a port-a-potty, pave paths, add a service area, delineate parking spaces - to have 29 total.

Smith noted that the location of the porta-potty and how it was to be screened would likely be the biggest obstacle to neighborhood agreement with the plan. The slamming doors, rather than the smell, seems to be the more frequent cause of complaint in other places, Smith said, and suggested Berry and Kent think of alternative sites in the open space/school site for the public toilet. Berry replied that the roughly 100-foot hose of pump-out trucks limits possible locations to be proximal to Smith Lane and Williams St.

Chairman had asked counsel if there was a waiver process with respect to the site plan. Counsel felt it would be difficult to defend a waiver of the site plan process. No site plan was approved for the community gardens. As far as site plans are concerned, the space is still a school. The regulations are very particular about that zone; about ten years ago, the Commission repealed that section (authorizing parks and playgrounds in the R-20 district) as-of-right. Now it needs a site plan review and special exception authorization (effectively, a special use permit). It requires a public hearing. The Chairman noted that the proposal addressed the coastal zone issue but the use will require a special exception.

F. Approval of Meeting Minutes - Regular meeting of November 16, 2021. No comments. Approved without objection.

G. Approval of Zoning Enforcement Officer's Report - November 2021. Approved without objection.

#### H. Old Business

1. Update on STR - four STRs still advertise for less than 30-night minimum. Enforcement is ongoing. Chairman noted that the ZEO can't issue a notice to someone just for advertising. Counsel advises that Commissioners should visit Mr. Mulholland if they have questions re: enforcement. Tanner said a Noank Village resident routinely e-mails photos of STR activity to Mr. Mulholland. Chairman felt this was helpful to the ZEO.

2. Consideration of Amendment of the Noank Zoning Ordinance to Prohibit Cannabis Establishments. Chairman read into the record the draft amendment:

The establishment of a "Cannabis establishment" as defined in Section 1 of Public Act No. 21-1 (June 2021 Special Session), and as may be amended from time to time, is prohibited in all zoning districts of the Noank Fire District.

3. Consideration of Amendment of the Noank Zoning Ordinance to Revise the FEMA Look-Back Period. Chairman passed out a draft text amendment, which deleted "ten-year" and replaced it with "two-year." Tanner suggested making plural what now is singular: i.e. change text to "repairs, reconstructions, or improvements....costs..." No objections. Proposed language change approved and will be included in the omnibus amendment.

4. Continued Consideration of Amendment to P.A. 21-29 ADU housing and parking issues.

Chairman said he sees three ways to approach the text change:

- a) draft language that comports with the Act, and change what the Commission sees fit to change;
- b) hold a Special Meeting workshop for the public to give suggestions. However, since the Commission has not yet discussed Noank's amendment to PA 21-29, that workshop would be held after it has clarified its vision;
- c) conduct a white board exercise, i.e. start from scratch.

The Chairman noted that a feature of the Act requires a municipality to have an Affordable Housing Plan similar to a Plan of Conservation and Development. Counsel suggested we might ask if Groton would accommodate Noank's views in its Affordable Housing Plan, because Noank has no planning staff. The Chairman said the Commission could send a representative to their meetings. Powell approved asking Groton to include Noank's views in its Affordable Housing Plan. Tanner said he wanted someone to inquire at Groton and would like to know how the town would include Noank, and then decide what to do based on that input.

Discussion ensued about Federal and State Affordable and Low-Income Housing programs. Tanner felt the objective of the law (PA 21-29) was to deal with Darien, Greenwich, and New Canaan. He said Noank already has lots of relatively inexpensive apartments. Smith opined that if Noank is covered under Groton's plan and, out of 700 Noank households, perhaps 25 apartments are affordable (whether or not they meet a statutory definition of it), that may be sufficient to say Noank is doing about what a reasonable person would expect. Hearing no dissent regarding making the inquiry at Town of Groton, Chairman said he would do so.

The Chairman said Counsel and ZEO advised the Commission might want to opt out of the Act first and later amend its ordinance to fit Noank's rental apartment needs. The opt-out process does not go in the Omnibus Text Amendment. Chairman detailed the process and discussion ensued about a supermajority possibly being needed to clear the Executive Committee. Oviatt approved of opting out first. Tanner opposed opting out first because discussion of the Commission's "vision for what Noank is trying to accomplish" has not begun. Smith said the Commission will need a good reason to opt out. He said May would be the month to begin the opt-out process because of the calendar and notification requirements.

Chairman presented a draft of a proposed text change amendment referring to ADUs under P.A. 21-29. Tanner said he wanted to read Oviatt's analysis of where Noank's affordable housing is now "versus what the new law says." Commissioners read Oviatt's analysis silently.

Chairman suggested a "good idea-bad idea" decision on anything in the new law. If most ideas aren't in Noank's best interests, that supports opting out. He said it was difficult for him to look at Oviatt's comparison and remember everything in the act and suggested Commissioners have both his draft text change and Oviatt's analysis before them.

Oviatt and Smith pointed out convoluted language in the new law regarding apartment square footage.

Oviatt asked, if the Commission opts out, can it still require those who want to establish an ADU to come before it? The Chairman responded that the as-of-right ADUs still need a site plan and a few other requirements according to the Noank Ordinance, and have to meet standards such as size of the unit, size of the lot, but the Commission would not be able to require a public hearing or a special use permit.

Oviatt asked, is one of the reasons to opt out because the Commission wants to maintain control of establishing new ADUs in Noank? He said it may be the most important reason to opt out.

Discussion ensued about specifics in Noank's ordinance vs. specifics in the new law regarding apartment square footage; the date that existing ADUs were established; as-of-right dwellings being attached to the

main house, minimum lot area, minimum unit size. Tanner expressed that lot size coverage for the Fire District should include any square footage attributable to the ADU. He said “whatever square footage an ADU occupies in the lot, plus the building and accessory buildings have to conform to our lot size regs.”

Chairman said that Counsel suggested the Commission use Noank’s Draft STR regulation as a model, for format purposes and then tailor it to ADU use by zone.

Discussion on P. A. 21-29 was concluded for the time being.

**Motion (Steele/Powell)** to adjourn. Approved unanimously. 9:08 PM.

Respectfully Submitted,

Elizabeth Yerkes, Recording Secretary