

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

Approved Minutes of the Regular Meeting

Date: Tuesday, January 18, 2022

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; John Casey, Commission Counsel; William Mulholland, ZEO.

A link to the recording of the meeting is: [https://1drv.ms/u/s!ApV\\_BVCbHuQwtA7q92UgaCK6qhf6](https://1drv.ms/u/s!ApV_BVCbHuQwtA7q92UgaCK6qhf6)

**Chairman's Remarks:** Chairman Smith has heard back from Town of Groton Planning Department regarding whether the Town would be willing to include Noank in its affordable housing plan as part of the 2021 legislation on public housing. The town has not yet decided.

**B. Public Hearing:** None.

**C. Public Comment for Issues not on Agenda:** None

**D. Applications for Design Review:** None

**E. Receipt of Town of Groton Parks & Recreation Proposal for Site Plan Review of Changes at the Noank Community Garden (former Noank School Property).**

1. Chairman said ZC should discuss three items this evening:

i) Waive the requirement for an A-2 type survey: The Noank zoning ordinance requires a survey "to A-2 standards," but Section 11.2.2 allows partial waivers of this requirement. The Kent & Frost LLC (landscape architects ) survey is not prepared to A-2 standards. Smith said that if ZC decides to require the A-2 survey, the Town and Kent & Frost LLC said it would take two months to get one. Smith suggested that the Commission would not want to receive the application, start the clock and not have all the pieces two months later, and now be behind in the statutory schedule that it is required to follow.

ii) Exceptions to Coastal Site Plan Review: According to Section 15.1 of Noank ordinance, the Coastal Site Plan Review cannot be waived but exceptions can be made, such as for pathways and fences. Smith prepared Motions for the Commission's consideration that convey what this means.

iii) Schedule public hearing: if ZC waives the A-2 survey requirement, it can schedule a public hearing tonight.

**Discussion:** Attorney Casey said it is acceptable for the Town Parks & Recreation and its landscape architect to make brief comments. Smith asked applicants whether anything had changed in the plan since it was heard last month. Kent said changes were: add evergreen screens on SE corner, make information on plan more legible. Parks & Recreation Director Mark Berry said they added a water fountain.

Berry had formally requested a partial waiver in writing. He suggested that most of the work being proposed is away from the property edges other than landscaping. Berry hoped that the commission would consider its request to waive the A-2 requirement. Smith introduced Brian Kent as project consultant for the record.

**Motion (Steele/Tanner):** Partial Waiver of Site Plan Requirements - Section 11.2.2

I move, in response to a request received from the Town of Groton Parks and Recreation Department, that the Noank Zoning Commission, by Resolution, partially waive, in accordance with Section 11.2.2 of the Noank Zoning Ordinance, the following site plan requirements in connection with the application by the Parks and Recreation Department to improve the Noank School Property:

- 1) The submission of a Boundary Survey Plan that meets the requirements for accuracy to A-2 Standards as required by Section 11.6.1, and to instead accept as a substitute the Landscape Design Plan dated January 5, 2022, by Kent & Frost Landscape Architects; and
- 2) All other site plan requirements contained in Section 11.6 not otherwise contained on the Kent & Frost plan dated January 5, 2022 or included in the other application materials.
- 3) This motion is made on the basis that an A-2 survey and the other information would in no way aid the Commission in its determination of the applicant's compliance with the Noank Zoning Ordinance, as well as to avoid unnecessary delay and expense for the applicant, whose proposed activity is minor in nature and in its impact on the character of the Fire District.

Oviatt asked for definition of an A-2 survey. ZEO Mulholland said it is a survey with a degree of accuracy within an inch and may contain grading at two-foot intervals, depending on what client wishes to pay for. He described materials that licensed land surveyors use to mark boundaries, and said "if you were putting a building on this you would want an A-2 survey," and agreed that an A-2 is not needed. Setbacks are mainly what concern clients.

**Action:** Motion carried unanimously.

**Motion (Steele/Powell):** Exemption from Coastal Site Plan Review - Section 15.1

I move that the Noank Zoning Commission, by Resolution, find that the application by the Town of Groton Parks and Recreation Department to improve the Noank School Property, which includes the planting of trees, development of new and resurfacing of existing paths, adding to and movement of gardens, orchards and playground areas and making other improvements to site amenities, is exempt from Coastal Site Plan Review under the following sections of the Noank Zoning Ordinance:

- 1) Section 15.1(a) (which exempts gardening, grazing and the harvesting of crops); and
- 2) Section 15.1(d) (which exempts the construction of new or modification of existing on premises fences and pedestrian walkways and signs and such other minor structures as will not substantially alter the natural character of coastal resources as defined in the Connecticut General Statutes).

Discussion: Tanner asked why ZC is considering this since the site is so far from the coast. Mulholland answered that a Coastal Site Plan review looks for effects of drainage on coastal resources. Mulholland noted that, typically, commissions exempt this type of activity because of the absence of adverse effects. Casey added that a 2021 amendment to the Connecticut General Statutes emphasized the effect of tributaries on coastal communities.

**Action:** Motion carried unanimously.

(00:17:44) Smith asked whether ZC wished to schedule a public hearing. Much discussion of optional dates. ZC scheduled Public Hearing for March 15, 2022.

E. Discussion of Public Input During Design Reviews (00:23:50)

1. Commission Consideration of Revisions to the Process of Obtaining Public Comment during Architectural Design Reviews

Smith asked: Is there a way to provide public input on design review applications without going to a formal Public Hearing? He described a proposed process that he and Attorney Casey had worked on to

obtain brief public input during initial consideration of the application. Sometimes it would require two meetings instead of the ZC's typical procedure which allows approval in one night. The first meeting would have a description of the proposal by the ZEO or Chairman. Then, expressions of public interest would be received. This would not be the time for detailed comments as if it were a public hearing. Then, the Commission would decide whether a public hearing was warranted. That would ordain the next steps in the process. If a public hearing was required, that would defer further action at that meeting and a hearing would be scheduled.

If a hearing was not required, the Commission could do all of its business that night but Counsel recommended the Commission break the consideration and approval part of the process away from the initial review part and consider approval under New Business. Powell asked if, at the second stage, the ZC could still agree to hold a future public hearing. Casey noted that the Commission has discretion as to the level of review. Either kick it back to the ZEO or do a Site Plan Review (which is how most are now done) or do a Special Exception. The Site Plan Review could be done with a public hearing so the applicant would not have to comply with all of the Special Exception requirements. The regulation was originally drafted to require two steps. Approval can be accomplished in one night as long as the public knows where it can comment. Otherwise, it's unfair to the applicant and also the members of the public not present. Then the Commission makes an explicit decision as to the level of review to be required. A variety of potential motions were discussed.

(00:31:55) Oviatt asked what the problem would be for having a public hearing for each application. Casey and Mulholland discussed expense and logistics. Not every application in Noank gets a public hearing because of time and expense: required newspaper notices cost about \$200 each and three would be required and the applicant must notify each neighbor by Certified Mail (return receipt).

Mulholland said some towns require the applicant to pay for notices so now applications "could run \$1,500 apiece." He noted some people are uncomfortable with that. Casey said that the ZC can propose that the applicant pay the noticing fees to alleviate the pressure on the FD budget. Casey noted there's no rush to approve these applications but the Commission should not unnecessarily drag things out either. He said that the ZC could make every application a public hearing. He also cautioned that mistakes frequently occur and the ZC would have to re-notice. In his experience, improper noticing causes 1 in 10 hearings to be delayed.

(00:34:35) Hansina Wright, Alternate Commission Member, raised the concern of proof of noticing neighbors of application (green return receipt cards). She also asked about the requirement in the zoning ordinance to post property for which a design review application is pending. Smith asked the ZEO how to prove that the noticing sign was posted? Smith suggested a photo, as part of the submittal package. Casey read the applicable section of the zoning ordinance. ZEO suggested to amend the requirement to say "shall provide evidence of installation" by bringing in a photo of the sign. Casey said that in the City of Groton, the applicant has to submit a photo. That's the way that people know what's proposed. If the package is incomplete, either without proof of posting or of noticing, the application would be delayed. Smith noted this may be an issue that requires a revision to the ordinance.

(00:38:35) Tanner asked how the public gets to react to the notice? Can we invite public to submit comment to the ZC by email in advance of, or bring comments to the meeting where the application is heard? Tanner suggested that the ZC invite input from immediate neighbors. Casey advised that the ZC not ask neighbors for public comment. Anyone who is disappointed with the ZC decision has the right to appeal the decision whether they showed up at a meeting or not. Tanner said he wants early input to help the ZC from making mistakes in the first place.

(00:42:45) Oviatt asked what Casey's advice would be? Casey responded he would not require a hearing for each application. He would separate out the receipt of application and solicit public expressions of interest during the receipt portion. This would not be a full airing of grievances. If, for instance, ten neighbors attend the ZC meeting and express interest, the ZC could decide that that is significant public interest and might need a public hearing. At that point, the ZC may decide it has heard enough to make a decision, someone makes a motion to accept the application as complete and the ZC needs a public

hearing. Someone seconds, you vote, and schedule the public hearing. Public hearings are set up for fundamental fairness, not due process. When ZC feels all has been aired, it closes that part of the meeting, deliberates and decides.

(00:46:00) Smith agreed with Tanner on the need to give people the opportunity to get their views to the Commission. If the ZC requires the posting of the sign... Casey described the opportunity to declare an application as incomplete so it would be tabled until the next meeting. The risk is that an incomplete application is delayed. Smith continued with a description of the process whereby the agenda is sent out a week before the night of the meeting. A person sees the sign, realizes they have an interest and they get the agenda and see that address has a proposal for the night of the meeting. That's how they are informed. They can attend the meeting and provide their expression of interest. Smith said he wished to keep Design Review as uncomplicated as possible while incorporating Tanner's suggestion of getting public input.

(00:48:38) Steele asked what does the posting sign say they are supposed to do? Does it say the meeting will be held on a certain date? So that's an invitation to come air their concerns? Tanner wondered how they would know what is being proposed? Smith proposed that the application be available at 5:30 the night of the first meeting for public review. Tanner thought that was insufficient and that the applications should be available earlier. He felt the ZC needed to make information available before the ZC first discussed the application that is being proposed. Mulholland suggested Noank's new website [Noank Fire District](#) was a good place to alert the public. Smith suggested the one page application, if in enough detail, would be a good way to start. Casey noted in East Lyme, they put everything on the website. Mulholland noted that, usually, it's the immediate neighbor that is most interested. Wright mentioned the prior method of the Commission was to view plans during ZEO hours and ZC Clerk office hours. Tanner suggested applications could be posted on the bulletin board on the wall in the hallway. Smith noted that if an ordinance change was required, it should be discussed over the next few months to be included in the omnibus amendment being prepared. Mulholland noted the penalty for non-compliance with the requirements of the process could be a significant delay in getting their work done.

(00:54:55) Steele asked how, during the initial comment period, the chair should limit public input at the receipt portion of the meeting. She felt people would want to speak initially and might be upset if they were cut off. Casey suggested asking for a show of hands of those interested in speaking on the application, then "keeping a heavy hand on your gavel." Mulholland suggested a time limit. Oviatt and Powell thought most proposals would not be controversial and most people would not complain. Powell felt if 20 people showed up, the Commission was likely to just go to public hearing. Casey offered an example of a next door neighbor. The Chairman might ask the nature of his concern and, in this case, not have such a heavy hand on the gavel. Casey reiterated the ZC should be looking for concerns not substantive comments.

(00:57:33) Tanner suggested using similar language as was used in the informal STR public meeting in the summer of 2021 to state what's appropriate commentary and level of detail. He felt the ZC should solicit substantive comments based on what's required in the design review regulation regarding architecture or landscaping, in particular. Discussion ensued on how to control and limit comment to the expressions of public concern. Tanner asked whether the public could say anything about the proposal at the first meeting. Smith said "very limited." Casey said comment should be limited. The ZC can ask a person for more detail about their concern to assist the Commission's determination of whether to go to public hearing but every public comment opportunity the commission provides should be reflected in the agenda. The ZC should take as much comment as it needs to make its discretionary decision on whether to hold a public hearing. The ZC should not let the expression of public interest period turn into an unnoticed public hearing. He stressed that the ZC should advise the public to return to speak at the public hearing so their concern weighs on the final decision. He felt the Commission needed to ensure those expressing their public interest understood that only what is said at the hearing will be considered by the Commission. If the public did not return to speak at the hearing, the only information the ZC would have in its record is what the applicant provided.

(01:03:24) Casey then discussed the Village District process of zoning and noted that Noank decided not to go that route. Its regulation (Ed. on design review) was upheld in court. The Commission still has to determine the level of review. It's a matter of fairness for everyone. Smith noted that, under the new procedure, most applications would still be done during the one meeting just like the Commission has done previously but it was very important to have the new process for those that have a legitimate concern and would now have a way to express it so the Commission can determine the proper level of review. Mulholland suggested that if there's a proposal for a knockdown and rebuild, the ZC would want to have a public hearing.

(01:05:17) Casey noted if the ZC decided not to have a public hearing but it required the applicant to post their sign and the agenda noted that the ZC was taking public interest comments when receiving the application, then the ZC would be justified later, after approval, in stating that it had followed the proper process and allowed for that interest to be expressed. There was a sign, the public comment opportunity was on the agenda, the email to Noankers alerted them to the agenda item, everything would have been done legally, everyone would have been noticed properly. In the last situation, some people apparently felt they were not informed even though the Commission did everything required of it legally. This is just a step further to get that public expression of interest.

(01:06:27) Tanner wanted the ZC to require design review applicants to mail letters to neighbors. Smith noted that this is required for a Special Exception. Tanner said the ZC has that mechanism in its regulations and he felt the Commission had the latitude to implement such a process in these cases. He also felt that, early in the architectural design review process, the commission handled everything but then decided to defer some of the standard proposals to the ZEO, e.g. solar panel applications. Tanner felt that the Commission should review the kinds of applications that come before it and decide which ones could be deferred to the ZEO and which, like a tear down and rebuild, that maybe in the new process the ZC has a clearer idea for approving in one night vs. it's more appropriate to have a public hearing.

(01:08:45) Smith asked commissioners whether the ZC should proceed with Casey's strategy of: i) brief description of application and its status; ii) solicit public interest; iii) determine application completeness; iv) determine level of review. No disagreement. Smith noted that there would be a hierarchy of motions to use to make the decisions.

Smith asked if the ZEO can require a photo of the posted sign that notices neighbors of the upcoming design review application without a change in the ordinance? Casey felt he could.

(01:10:50) Casey said the design review application process was envisioned to take two meetings, the sign-posting requirement exemplifies this. He said that the ZC can always send minor design review applications back to ZEO. Yet, Administrative Design Review Section 2.26.6 (Procedure) states: "application approvals by the ZEO by this method will not be subject to the posting of property section." That means, Casey said, only those applications that the ZC will review as a Site Plan or Special Exception would be required to post notice. It means that ZC would require, if not two formal meetings, at least a pre-application meeting as well as a formal meeting.

(01:12:59) Tanner recalled why the original procedure came about. He said that the two-step process emerged because a prior ZC chairman was concerned that applications took too long. He felt the ZC sacrificed making sure it protected the village in order to grease the skids for applications. He didn't think that's what the Commission was supposed to do. Regulations were put in place to protect the village. To make it easy to get an application approved may thwart the goal of protecting the village. He felt if Counsel thinks a two-meeting process is better, he would agree.

(01:14:13) Smith was concerned with doing every application in two meetings when there's a way to deal with smaller, routine applications in a two-step process in the same meeting. He felt over 90% of the applications would be in that category. Smith agreed with Tanner that the ZC should focus on significant applications, while the ZEO can review and approve routine ones. Tanner was concerned that the ZC was making speed a priority. Smith observed that the process laid out by Casey allows the ZC to accomplish its

business in one night when the ZC has decided it doesn't need a public hearing and it also lets it reflect on public expressions of interest to decide that a public hearing is warranted. He felt the hierarchical approach was the best approach. The Commission could deal with the easy applications expeditiously. He did not feel that it was sacrificing the protection of the village, rather it's saying if a proposal warrants expedient treatment in one meeting, we should do that. If it's a special exception, it guarantees a public hearing and if it's a Site Plan Review with a discretionary public hearing, we have a public hearing. If you don't need a public hearing, accomplish your business in one night. Tanner felt it was desirable to get more input.

(01:16:41) Steele felt that there had to be some reason that applications for smaller proposed activities justified a more expedited process. She believed that's what Casey was proposing to satisfy the simple as well as the significant applications. Tanner noted that's what he was asking for, some standards to ensure the Commission received proper comment on the significant applications. Steele noted that the ZC did this with solar panels where the applications were ceded to the ZEO because "they are all the same," however, porches for instance, may not be. Steele was concerned about the new flexible process, though ready to implement it. She was not yet prepared to adopt Tanner's suggestion of making standard categories of design applications for the ZEO to approve vs. more rigorous commission review because they (applications) may depend on a lot of factors. Tanner suggested the Commission review all applications it approved in the last year and determine which ones justified what level of review.

Casey said the ZC has discretion as to the level of review. It can return the application to the ZEO, consider the application as a request for a Special Exception, or do a Site Plan Review with or without a public hearing. It might require another type of motion. Smith noted the ZC can return an incomplete application for further work by the ZEO with the applicant. Casey noted the ZC could also return a complete application to the ZEO for review and approval, without further consideration of the Commission (e.g. a change in the style of a railing). The receipt portion of the application review process, thus, becomes crucial to how the Commission proceeds.

(01:22:55) Smith concluded that the Commission would embark on the process and it would be a learning process. Powell said that however the Commission modifies the process, more public input than we're getting now is good. Casey agreed and noted it's better for the public that you have on your agenda that the Commission is accepting expressions of public interest.

(01:24:30) Oviatt asked Casey if, at one point in the two step process, there had been the opportunity for public input at one time.

Casey and Hansina Wright (alternate) summarized how Noank arrived at its existing Design Review process by amending its Special Act. They recounted the history of Noank's Village District concept classification, lawsuit, an amendment to the Special Act passed in 2005, and municipality status in some areas of the fire district. Casey said Noank had had no zoning control over design. Wright said the Town of Groton issued building permits, but the Fire District had no authority. Wright said there was no zoning control of design review at that time (before 2005), and that the design review process emerged from the Special Act. She said it gave Noank demolition delay control.

(01:26:30) Casey explained the General Statutes have provision for Village District zoning to protect historic neighborhoods. It's not a historic district. Noank went for an amendment to its Special Act to acquire power over design review. Wright said that amendment afforded Noank Zoning the power to be considered a municipality, separate from and independent of Groton in certain ways. It gave the municipality definition teeth for the fire district. Casey said it expanded the fire district's zoning powers. Under Village Zoning, which Noank did not adopt, every application would have required a public hearing.

(01:28:15) Instead, the Commission, like Stonington Borough, passed Architectural Design review regulations under its zoning power which Noank always had the authority to adopt under its Special Act. The Halsey house lawsuit challenged Noank's power to regulate design reviews. Noank won and then settled out of court on the details of the house itself. The Court upheld Noank's power to regulate architectural design review, Casey said, under the Zoning power. Not under historic districts, not under

Village Zoning. Wright explained that, in the early 2000s, the ZC was considering ways to look at regulation changes to preserve the historic uniqueness of the Village and Fire District due to the effects of tear-downs. The Special Act gave the ZC the latitude to set zoning-related fees. The design review concept was being worked on and at that time, there were considerations on lot coverage and height, etc.

F. Approval of Meeting Minutes - Regular meeting of December 21, 2021. Approved without objection.

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

H. Old Business

1. (1:31:20) Update on STR

Some operators are renewing STR, others have switched to long-term. Total hovers about five Noank properties. Monitoring is ongoing.

2. (1:32:20) Consideration of Amendment of the Noank Zoning Ordinance to Prohibit Cannabis Establishments

Will discuss in New Business

3. (1:32:21) Continued Consideration of Amendment to P.A. 21-29 ADU housing and parking issue.

Smith referenced a spreadsheet that shows deviations between Noank ordinance and the P.A. towards making Long Term Rentals more convenient and effective. He suggested putting the opt-out and discussion on agenda for February or March. Asked Commissioners to line up reasons to opt-out. Recommended commission not leave it to the last minute because, if January 1 2022 deadline passes with no opt out, the provisions of the public act prevail for all time. This may not be in Noank's best interests. Requested that commissioners decide what they'd change to comport with the law. If no changes are supported, the opt out decision becomes easy.

(1:35:20) Oviatt said the spreadsheet provides enough information to decide, and wants a Public Hearing on the matter. Commissioners discussed scheduling of the topic for a Regular meeting, perhaps in March, to determine what measures to support. Smith suggested the commission needed good reasons to opt out and two paths: opt out first or opt out after discussion of what changes to consider. Suggested the Commission start the opt out process in April to be sure the process concluded in the early fall, to avoid running up to the December deadline. This would provide the Executive Committee time to decide and leave time for the Commission to adjust if necessary.

(1:37:25) Tanner wanted the ZC to have a general idea of what it wants to allow in Noank by the start of the opt-out process, so that when people ask 'why do you want to opt out?,' the Commission has a good answer. He suggested deciding item by item in the spreadsheet, looking at the options, perhaps there are others than those on the spreadsheet. Smith asked if anyone disagreed. No disagreement was offered. Smith said ZC will proceed in that way.

(1:39:18) Smith said he prefers Noank's ordinance especially in regards to the ZC's opportunity to influence the (housing) outcome for the best interests of Noank.

(1:40:08) Tanner said he wants the ZC to discuss and decide what constitutes a dwelling unit? What do we require re: cooking facilities - a microwave and a mini-fridge or a full blown kitchen? He mentioned accessory buildings that Noank's regulations specifically prohibit for sleeping.

(1:41:50) Smith noted the ordinance rule that specifies the 850-square-foot minimum unit size and the 10,000 square foot minimum lot size is limited to single family dwelling units that the owners want to turn into two dwelling units. It is not an ADU provision for the Fire District, which, Smith said, means Noank does not have an ADU rule. He suggested Noank is vulnerable on ADU rules because it doesn't have anything to build on.

4. (1:43:45) Consideration of Amendment of the Noank Zoning Ordinance to Revise the FEMA Look-Back Period.

No items.

- I. New Business:

1. (1:43:53) Review of Draft Proposed Ordinance Changes

Smith summarized changes. Needs Counsel's review then will go to the ZC for review, likely in February. Some substantive items (FEMA, Cannabis); many others. Changes highlighted. Some easy to understand. Others require explanation. Action on it is not pressing, the ZC can suggest changes and additions.

2. (1:45:34) Consideration of Schedule of Hearings for Spring 2022

Types of hearings required - The Community Garden in March, the Omnibus amendment (FEMA, all the other proposed changes). The omnibus hearing needs State and local agency notification with 35 days for response and two notices in The Day but no notification of neighbors. Nothing in Omnibus is pressing. Scheduling was discussed. The opt out process is the third hearing. May or June meeting for the Omnibus hearing was proposed. The other month was proposed for the Opt Out amendment. Discussion of process and sequencing of the hearings ensued.

**Motion (Powell/Oviatt)** to adjourn. Approved unanimously. 8:58 PM.

Respectfully Submitted,

Elizabeth Yerkes, Recording Secretary