

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Special Meeting

September 9, 2015

Vice-Chairman Carol Anest called the special meeting of the Newington Town Plan and Zoning Commission to order at 6:00 p.m. in Conference Room L101 in the Newington Town Hall, 131 Cedar Street, Newington, CT.

I. ROLL CALL AND SEATING OF ALTERNATES

Commissioners Present

Commissioner Frank Aieta
Commissioner Brian Andrzejewski
Commissioner Carol Anest
Commissioner Michael Camillo
Commissioner Robert Serra Sr.
Commissioner Stanley Sobieski

Commissioners Absent

Chairman Cathleen Hall
Commissioner Anthony Claffey-A

Staff Present

Craig Minor, Town Planner

II. REVIEW OF ZONING REGULATIONS

A. Procedures for approving ground-mounted solar panels

Craig Minor: The first item that we are going to discuss tonight is the issue of solar panels. In my report I described what we currently have in the regulations that relate directly or indirectly to solar panels. My conclusion is that solar panels for a home are just another accessory structure, if they are, in fact, incidental to the home or for that matter, if they are incidental to a commercial building. But once somebody, either a homeowner or a business, installs more panels than they need for their own use, i.e. for the purpose of selling power to the grid, that's different. That is a use that I think you have every right to consider regulating.

Commissioner Aieta: And how do you determine that?

Craig Minor: I would have to talk to an electrician and find out. I don't think it's rocket science.

Commissioner Aieta: All of them transmit electricity back to the system, no matter if it's your house or whatever. They all do because sometimes you peak, you have too much electricity, so you can't use that as a criteria because all of them give electricity back to the system no matter how big the system, what you have on your roof or the ground, or whatever, they all give back electricity, they are all set up.

Craig Minor: I said, if they are designed to create more electricity than the business or homeowner needs. That would require your approval.

Commissioner Sobieski: Well, my neighbor just put some in and what happens is, the excess of what he uses is fed back into the system, so if he uses five percent, ten percent of what is capable of producing, the rest goes back into the system. I think he gets reimbursed, I think he said eighty-five percent, so what I'm saying is, looking at it that way, technically the houses could fall under this.

Craig Minor: Let me follow up on this.

Commissioner Aieta: You can't be so vague, you have to have criteria, you can't leave it vague like that, you can't, you have to have regulations so that people when they read them they can make a determination without going to fifty different lawyers and let's get the Town Attorney's opinion, and then the ZEO going to Hanke and Hanke coming up with some stuff and we end up with things that we don't want.

Commissioner Sobieski: Do you know if any other towns have anything like this on solar panels?

Craig Minor: I don't think any town regulates personal use solar panels like we are talking about.

Commissioner Aieta: Because they normally don't put them on the ground. They are normally on the roof of the building, and then that's an accessory to the building. But we're starting to see, like the Pane Road thing, where they put it on the ground. You found a place in the regulations to try to justify that, but it doesn't because it says "building", and that's not a building, it's a structure, it's some kind of a structure that holds the panels. I think they should be regulated to the point where I wouldn't want to see them in front yards, side yards. I'd like to see them a little more discreet than having them, you know that big one, right on the same street, Pane Road, that big company there.

Craig Minor: Shuco?

Commissioner Aieta: They wanted to come and put a whole bunch of those on the property and I think you told them that we don't want them in front of their flag pole on the street, and I don't know, I think they ended up putting them on the roof of the building.

Craig Minor: I know they didn't put them on the ground, I know that. Well, if the consensus is you want to regulate ground mounted panels, I will research other towns to see what other they do.

Commissioner Aieta: And if other towns don't do it, then we should look at how we could regulate them. I don't want to stop them, but I don't think they should be in the front yard, not so visible, because they are not attractive.

Craig Minor: Mike would not approve one in the front yard because accessory buildings have to be in the side or rear. I'll see if any other town regulates ground mounted solar panels.

Commissioner Sobieski: There's a big one down in Milford at Pilgrim Furniture down there. That was one of the first ones.

Commissioner Aieta: I don't think we should regulate the roof-mounted. They should be able to put in as many as they can fit on the roof, but the ones on the ground that are visible, I think should be.

Commissioner Sobieski: I think they have something about ground-mounted panels if I'm not mistaken.

Craig Minor: In Milford?

Commissioner Sobieski: Yes.

B. Temporary renting of private residences via AirBNB

Craig Minor: As I said in my memo, this is an issue that all towns are starting to grapple with. Some towns are handling it one way, some towns are handling it a different way. I think a "wait and see" position may be appropriate. I've had one phone call from one gentleman who asked if it was allowed, and my answer was, I don't think it is. But that was an off-the-cuff answer. If I get more, or if we get complaints from neighbors, I will come back to you then, but shall we leave it alone for now?

Vice-Chairman Anest: Could you explain first what Air BNB is?

Craig Minor: Air BNB is a way to rent a room in your house to a stranger over the internet. There is a company called "Air BNB" that acts as the go-between, so you're not completely at the mercy of whoever the stranger is. There is some vetting of both parties, but the difference between this and just renting your home is, well, there are a number of differences. For instance, there are many variations on it. You could go through Air BNB and rent a room in a house while the family is still there. You're just renting a room to stay when you are in town for a few days, on a business trip or whatever. That's a little unusual. It's not unusual for people to rent their entire house; they've moved but they can't sell it, so they rent it and we certainly don't regulate that. We're not a vacation town, but let's say we were and people wanted to rent their house by the week, or by the month. We would probably regulate that. I think vacation towns do regulate the weekly and monthly renting of houses. But I don't see that as being an issue here in Newington.

Commissioner Aieta: Have you gotten any complaints from neighbors saying the people are renting a house? If it happens discreetly and no one knows about it, I don't even think it happens.

Vice-Chairman Anest: I know people rent rooms to a roommate to help pay the mortgage and they advertise it.

Craig Minor: AirBNB is for 28 days or less. That is one of their rules. It's like a bed and breakfast without the breakfast, just the bed, or as I said, it's like a boarding house, or a rooming house where you get a room but no food, but for less than 28 days. I would prefer just to let it go, but what do I tell the next person who asks?

Commissioner Aieta: If it's not in the regulations then you can't do it. If you get twenty or thirty or people complaining then we want to know about it. For all the years that I have been involved with zoning I don't ever remember hearing anyone complain about renting.

C. Section 6.10 Green Space, Landscaping and Buffer Requirements

Craig Minor: I didn't make any substantial changes, I just re-worded some things. I'll answer your questions if you have any.

Commissioner Aieta: You just re-worded it, you didn't change the intent?

Craig Minor: Right, exactly. It was such a long sentence that I felt it was confusing. Shall I go on to 6.10.4 (B)? This is the paragraph, this is the rule that we all know prevents businesses along the Berlin Turnpike from putting anything in the front yard. But what it actually says is, "New construction of businesses and industrial uses shall provide front yard green space and landscaping over 35 feet." So, I think we should re-word that sentence to: "No accessory structures, above ground utilities or pavement shall be placed in the front yard setback area." I think it is a clearer. The second two sentences I removed because those are the type of "waiver" regulations that the judge in MacKenzie vs. Monroe invalidated. You don't have the authority to waive regulations any more.

Commissioner Aieta: But if you take out the "35 feet", then you don't have any requirements.

Craig Minor: The front yard setback depth is 35 feet. That's the area between the edge of the property and the setback line, which along the Berlin Turnpike is 35 feet.

Commissioner Aieta: So that would include any new construction. You know, there are some people, not everybody on the Turnpike complies with that. Maybe because they were there before zoning. But as businesses came in we tried to upgrade. The idea for the last fifty years for the Berlin Turnpike, we were trying to make it more like a boulevard where you had a substantial amount of green space on both sides with a center green space. At one time it was all green, not asphalt. So the whole idea from years and years was that we tried to hold them to that 35 feet so we got that boulevard effect, the green space. We've held so many people's feet to the fire that I don't think we should start changing it now. But there are some people who go beyond. A good example would be where Verizon on the Berlin Turnpike, where the Leslie Pool is, they don't have 35 feet. There are some other ones too.

Craig Minor: And you know when you have left Berlin because Berlin doesn't have that.

Vice-Chairman Anest: Would you feel comfortable if we added in parenthesis (inaudible).

Craig Minor: I could do that.

Commissioner Sobieski: You want to make sure that this is their property and not the state right of way, that they understand that?

Craig Minor: Well, they might not understand it.....

Commissioner Sobieski: The 35 feet has to be on their property and not include the town or state right of way.

Craig Minor: Right.

Commissioner Sobieski: I didn't see that in here, that's why...

Craig Minor: It's not in there because that would confuse people. Anytime you define something that is already defined elsewhere will make people wonder, why are they defining it again here but not elsewhere?

Commissioner Aieta: So at some point you would have the 35 feet plus the state right of way as green space. It could end up forty, fifty, sixty feet.

Craig Minor: And there are some areas where we do.

Craig Minor: Buffers: I just added a few words to make it clear about the buffered areas. The last paragraph I deleted because it is one of those "waiver" regulations that were determined to be unconstitutional.

D. Section 6.11 Sale, Rental Service or Storage of Motor Vehicles

Craig Minor: I'm suggesting just one change. I'm suggesting that we allow car rental businesses that don't have any cars stored on site. I'm suggesting that because we have a couple of them in town, and it seems like an appropriate use to have on the Berlin Turnpike. So long as they don't have a sea of cars behind them, it would not look any different from any other business on the Berlin Turnpike.

Commissioner Aieta: Where are the cars?

Craig Minor: They would be some where else, maybe even in a different town. You call the day before, you ask for a certain type of car, they bring the car to the office, you show up at your expected time, you get in the car and you leave. The cars don't stay there, they are kept somewhere else. Oh, there will be a few cars there for pickup and drop-off, but there won't be a compound behind a chain link fence where a lot of cars stay on a regular basis. That would not be allowed.

Vice-Chairman Anest: Well, we have one now.

Craig Minor: Yes, it is are grandfathered.

Commissioner Aieta: Which one would that be?

Vice-Chairman Anest: Enterprise at O'Neil Plaza.

Commissioner Aieta: Where are the cars?

Vice-Chairman Anest: In the front and in the back. I went to rent a car there, and they went around to the back and brought the car out.

Craig Minor: So what I'm suggesting is that no cars be allowed there except on a temporary basis. You would pick it up there and drop it off there. It wouldn't stay there.

Commissioner Aieta: For this regulation, I think we tried to use the State's definitions, I'm not comfortable with this whole regulation. If I had my druthers, I would go back to pre-2007. Take the old regulations and put them back in there. Make some changes to it, changes that Carol and some of the other people on the Commission brought up to try to clean up the Berlin Turnpike and make everybody conforming and all of that stuff. This is so confusing, I don't know, do you understand what that means?

Commissioner Camillo: Yes, but...

Commissioner Aieta: It doesn't make sense.

Vice-Chairman Anest: For the first meeting in October, can you dig up the pre-2007 rules?

Craig Minor: If that is what you want, but I think you would have done that back in 2010.

Commissioner Aieta: Let me give you some history on what happened back in 2007, because I found out what happened. Vinnie Camilli was the Chairman of the Commission,

and the Commissioners were concerned about the center of town, and the neighborhood gas stations like the ones on New Britain Avenue, on Main Street and there used to be a car place in the center there, a car repair place, they were concerned about that. So, they didn't know how to regulate it, so they took everything out of the regulations which is a little drastic - if you have a hangnail, you don't cut off your finger. That is the approach that they took, and they took it on that and a couple of other places, rear lots, accessory apartments, they just took it right out of the regulations, and that is how they affected the things. It would have been so easy for them to take the regulations that they had and say, from this point forward, no neighborhood gas stations, or determine exactly what they didn't want in the regulations by saying, in the Town Center district there will be no auto-related uses. But we came up with some things that we didn't want to see on the Berlin Turnpike, we didn't want to see hoods open and stuff like that, we could put that back into the regulations. The basis of the regulation was good. It worked for years and years and years but they were too drastic in their approach to how they looked at the zoning regulations. I think we have to re-visit this. We should look at the 2007 regulations and use that as a basis and modify those regulations for the things that we want.

Craig Minor: Okay, but when the Commission back in 2011 started talking about restoring auto-related uses on the Berlin Turnpike, why didn't they just do that? Why didn't they just say, let's turn back the clock? I know that Ed Meehan spent many, many hours coming up with all those different charts showing what was made non-conforming and what was made partially non-conforming. Why didn't the Commission just restore the pre-2007 regulations?

Commissioner Aieta: I don't know, you had different people on the Commission.....

Craig Minor: There must have been a reason.

Vice-Chairman Anest: We never even thought about looking at pre-2007.

Commissioner Aieta: I can't, I've been thinking about this because I don't know what the hell this says, it's too confusing, I mean, there is a guy that does oil changes; what's different from a guy who works on transmissions and one guy does tires, but he doesn't do mufflers, and it's too convoluted, it's.....

Vice-Chairman Anest: Let's look at pre-2007 and see.

Commissioner Aieta: We know what we want to see on the Berlin Turnpike. We can incorporate those into the regulations.

Vice-Chairman Anest: Exactly.

Craig Minor: Well, that's what the current regulation does. What is in front of you now, the regulations that you now have.....

Commissioner Aieta: But we made all of these people non-conforming.

Craig Minor: But that is a different issue. You are right, we probably should have paid more attention to finding some kind of happy medium for these non-conforming ones. But as far as regulating new businesses, the regulation that you now have very clearly, for the person who needs to know what it says, tells him what is and is not allowed. For the past three years it has gotten you what you wanted and prohibited what you didn't want. It has done exactly what you wanted it to do when you adopted it back in 2012.

Commissioner Serra: Craig, if we are making these rules, shouldn't we understand them?

Craig Minor: Well, what can I say? It's a long sentence, but these are not big words.

Commissioner Serra: The only thing I would ask is when you find the pre-2007 regulations if you would e-mail it to us. I'd like to look at it before we get here.

Craig Minor: Sure. It will be in the agenda package.

Commissioner Serra: Yes, but sometimes you send it out earlier.

Commissioner Aieta: If we went back to the pre-2007 regulations and changes, then everybody would be conforming.

Craig Minor: It would also put gas stations and car dealerships back on the Berlin Turnpike.

Vice Chairman Anest: Well, we don't want car dealerships on the Berlin Turnpike.

Craig Minor: How are you going to prohibit them if you restore the old regulations?

Commissioner Aieta: We are going to make changes to those regulations.

Vice-Chairman Anest: We are going to use that as our template, and then we are going to work off of that.

Commissioner Aieta: Then you could say, from this point forward, these are the regulations, so you would have to comply, but the people who fall under the 2007 regulations, they are in conformity. I mean, you can't do that in zoning? Start at one point and say, what happened before worked because this one acre thing, no one has an acre.....

Craig Minor: And that is why you have not seen a single new auto-related business next to another business in an existing building, because you need four acres to do that. There is a reason why you did it that way, because the Commission wanted to make it as hard as possible.....

Commissioner Aieta: Well, we want to regulate it, but we don't want to throw the baby out with the bathwater. We want to make those people whole again that were here before 2007 who were conforming with less than an acre. I think there is a way to do that, by adopting the 2007 regulations and making changes to it, and the day that we adopt the regulations and vote on it, and from that day forward, everybody has to comply with the changes that we make. Everybody that was before that point, are golden.

Craig Minor: Right, they are back into compliance.

Commissioner Aieta: And maybe we can clean up some of this language and Carol can get what she wants. I know what her pet peeves are, what she is looking to not have on the Turnpike, and they are the same as mine. I don't want to see the balloons and flags and all of that stuff, that's what we were trying to get away from.

Vice-Chairman Anest: Just like our landscaping is different from Berlin and Wethersfield, that's what we were trying to do.

Craig Minor: Well, that is what it does, but if you want to go back and look at the old regulations, you can certainly do that.

Vice-Chairman Anest: I don't know why we never did that, why we didn't think of that.

Craig Minor: I have to assume there was a reason that you and your Planner spent a lot of time coming up with different regulations. I'll dig it up and bring it to you.

E. Section 6.12: Willard Avenue Development District

Craig Minor: I'm not suggesting any changes to it. It hasn't been used since I have been here. We came close, Pat Snow almost used this regulation to enlarge that apartment building that he no longer owns on the corner of Willard Avenue and Cedar Street. So he did come close to using it, but then backed away because it didn't work for him. I have not heard of any interest since I have been here so I would just leave it the way it is.

Commissioner Aieta: Where is, is it just that corner? How deep is it?

Craig Minor: Actually it is what we call a "floating zone". It's been plopped down wherever the Commission agreed to allow it to plop down. At the moment, it is here, and I believe...

Commissioner Aieta: Some of the old houses north of Mike's place are part of that, a Victorian one.....

Commissioner Sobieski: The old salt box.

III. ADJOURN

Commissioner Sobieski moved to adjourn the meeting. The motion was seconded by Commissioner Camillo. The meeting was adjourned at 6:35 p.m.

Respectfully submitted,



Norine Addis,
Recording Secretary