

**TOWN OF SALEM
PLANNING & ZONING COMMISSION
REGULAR MEETING MINUTES
TUESDAY, JULY 26, 2022 – 7:00 P.M.
SALEM TOWN HALL – CONFERENCE ROOM 1**

**The minutes submitted below have been filed in accordance with
Section 1-225 of the CT General Statutes. They are subject to final approval
with or without amendments by a vote of the Planning & Zoning Commission.
Approval and any such amendments will be detailed in subsequent minutes.**

PRESENT

Vernon Smith, Chair
Carl S. Fontneau
Walter Volberg
Gary Closius, Alternate (*seated*)
Steven Shelley, Alternate (*seated*)

ABSENT

John Gadbois, Vice Chairman
Diba Khan-Bureau
Jennifer Lindo
Thomas Reith
Dave Knopf, Alternate (*seated*)

ALSO PRESENT

Town Planner Justin LaFountain

1. CALL TO ORDER

Chairman Smith called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

Alternate Commissioners Closius and Shelley were seated for Full Member Commissioners Lindo and Gadbois, respectively.

3. PUBLIC COMMENT: *None*

4. PUBLIC HEARING: *None*

5. APPROVAL OF MINUTES OF PREVIOUS MEETING(S):

a. Regular Meeting Minutes of July 12, 2022

**M/S/C: Fontneau/Volberg, to approve the Planning & Zoning Commission
Regular Meeting Minutes of July 12, 2022.**

Page 5, Track Record & Past Experiences, 3rd Sentence:

Furthermore, at the request of the neighboring properties, over 1,200
linear ~~square~~ feet of fencing have been installed....

Discussion: None. Voice vote, 5-0, all in favor.

6. OLD BUSINESS:

- a. SP 22-01 Statewide Pawn, LLC:** Application to amend the existing site plan at 1 New London Road to allow outdoor display of merchandise. The Property is zoned General Business. *Continued from July 12, 2022*

M/S/C: Shelley/Fontneau, to continue Application SP 22-01 Statewide Pawn, LLC: Application to amend the existing site plan at 1 New London Road to allow the outdoor display of merchandise to August 9, 2022.

Discussion: Town Planner LaFountain stated that this would be the final extension afforded to the Applicant. Voice vote, 5-0, all in favor.

- b. ZMA 22-01 – 45 Forest Drive, LLC:** Application to apply the Special Agriculture Overlay Zone to 45 Forest Drive (currently zoned Rural A), for the purpose of operating a special event facility, with associated overnight lodging.

Commissioner Shelley stated that he would be abstaining from the discussion and voting on the application as he was not present for the July 12 Regular Meeting.

Commissioner Smith provided a brief recap of the Public Hearing. Two draft motions to approve and deny the Application have been prepared by the Town Attorney and Town Planner for the Commission.

Commissioner Closius expressed his view that the proposed application does not meet the intent as specified in Section 30.1 of the Salem Zoning Regulations. The Regulation states that “It is the intent of these regulations to establish a floating zone to ensure that those uses continue to and expand, and to promote adaptive re-use of existing agricultural buildings.” Because neither the property nor the structures on the property were ever utilized for agricultural purposes, he felt that approving the Application would not comply with the intent of the Regulation.

Commissioner Volberg concurred, adding his concerns with respect to the “public health, welfare, safety, and property values” of the residents who reside in the neighborhood (Section 30.15(d)). He felt that approving the application would not be in the best interest of the town to approve the application.

Commissioner Fontneau also agreed, adding that “The intensity of all uses proposed within the Special Agriculture Zone shall be as deemed appropriate by the Commission.” (Section 30.2) He stated that there is no language in the regulation regarding beds or overnight guests in Section 30.4(n), which lists the permitted uses. While the underlying Rural Agriculture Zone allows for the establishment of a bed and breakfast inn, it is limited to accommodations for no more than ten (10) guests. The property in question is comprised of a total of 30 (thirty) beds. The only zone that would allow for such an intense hotel/motel use is the Highway Commercial Zone. He also disagreed with Atty. Michael Carey’s argument that the saving of trees and

housing of birds qualifies as an agricultural use of the property (Section 30.15), especially when absent of a Conservation Easement or Language saving it in perpetuity as such. In addition, Section 2, Definitions, of the Regulations defines a Family as “one(1) or more persons related by blood or marriage living together as a single, non-profit housekeeping unit, including servants and employees. A group of not more than five (5) persons unrelated by blood or marriage living together as a single-non-profit, housekeeping unit may be considered to be a family.” (Page 7) The associated overnight lodging would, most likely, be comprised of more than five (5) unrelated persons. The Town’s Plan of Conservation & Development (POCD) speaks of encouraging businesses that are appropriately scaled and located to promote the agricultural history and pleasant rural character the town and its residents have come to enjoy. The intensity of the proposed use located in proximity to the seasonal residential zone, the most densely populated zone in the town, is not appropriate. He felt that the application is not consistent with the Town's comprehensive plan for the aforementioned reasons. He also spoke with respect to the “public health, welfare, safety, and property values” (Section 30.15(d)), stating that the proposed one-way driveway without any bump outs for emergency vehicles is inadequate for the amount of traffic the venue would generate. Many aspects/requirements were not addressed, including the submission of a lighting plan that would require the approval of the Commission and the preliminary approval for the road cut for the driveway, which, to his knowledge, was previously applied for and denied. Furthermore, it is unclear whether the property values of the neighborhood would be affected. Most of the economic impact would benefit the owners; any benefit the Town’s businesses would have from the venue are minimal, at best. In addition, because the venue has not been changed to a commercial activity, the tax base would not be improved. Per Sections 30.1, 30.2, and 30.15, he did not feel that the Commission would be able to approve the Application.

Chairman Smith Vernon recited the Town Planner’s Memorandum, which states that the Commission would be acting on the application in its legislative capacity, rather than its administrative capacity. In its administrative capacity, the Commission can make decisions based on a specific set of rules as outlined in the Regulations. The staff can also approve such applications should the Commission deem so. As such, applications that meet all of the required criteria, as outlined in the Regulations, must be approved. In its legislative capacity, the Commission would be either creating new regulations, amending regulations, or amending the zoning map. In such cases, the Commission's discretion is much broader. By creating or amending regulations or creating or amending where the regulations would be applied, the Commission is amending the law. As such, applications that meet all of the required criteria can still be denied. Should the zone change not meet all of the criteria, approval of the application

would be difficult due to the findings stated in the Regulations. He concurred with the Commissioners comments.

Town Planner LaFountain stated that the Town Attorney and himself drafted the motions to approve, with conditions, and deny the Application. The Commissioners may utilize all, some, or add to the conditions for approval and/or reasons to deny.

M/S/C: Volberg/Smith, to deny Application ZMA 22-01 by 45 Forest Drive, LLC, to apply the Special Agriculture Overlay Zone at 45 Forest Drive for the purpose of operating a special event facility with associated overnight lodging, as shown on the associated site plan, for the following reasons:

- 1. The application does not meet the intent of the Special Agriculture Zone, as there are no existing or previously existing agricultural uses or buildings on the property, nor is there an intent to use the property in an agricultural manner, as described in Section 30.1 of the Zoning Regulations and as shown in practice with all other applications of the Special Agriculture Zone;**
- 2. Overnight lodging is not permitted in the Special Agriculture Zone or the underlying Rural A Zone, and therefore cannot be approved by the Commission;**
- 3. The application of the Special Agriculture Zone for this purpose at 45 Forest Drive would be incompatible with the surrounding single-family neighborhood;**
- 4. The application is not consistent with the Plan of Conservation and Development in that it would not promote economic development that is a good fit for the town by permitting a highly disruptive business use within a developed single-family neighborhood;**
- 5. The application is not consistent with the comprehensive plan of the town as it would introduce a noisy and disruptive commercial use into an area used primarily for single family homes; and**
- 6. The applied for zone change would adversely affect public health, safety, and welfare as well as property values as it would cause the residents of the adjoining residential neighborhood to suffer offending noise and light from the proposed use which would negatively impact their property values as well as the quiet enjoyment of their properties.**

Discussion: None. Voice vote, 4-0-1, all in favor. Voting in Favor: Commissioners Closius, Fontneau, Volberg, and Smith. Voting in Opposition: None. Voting in Abstention: Commissioner Shelley.

Town Planner LaFountain stated that a Legal Notice of Decision will be published in the newspaper. The Applicant will have 15 (fifteen) days from the date of publication to appeal the decision to the Superior Court. Because of the existing pending legal case with the Applicant, it might be decided to either hear the case as a new, separate case or the two cases might be combined.

b. Plan of Conservation and Development (POCD)

Timeline – Town Planner LaFountain stated that the Town has applied for a waiver that would allow them to apply for discretionary funding from the State by submitting a statement regarding the missing document with their grant application(s). While there is no set deadline, the submission of the document would help simplify the funding process. A draft of the POCD must be sent to the SCCOG (Southeastern Connecticut Council of Governments) and the Board of Selectmen for review, comment, and approval 65 (sixty-five) days before the Public Hearing. The Board of Selectmen may also opt to hold a Public Hearing. Should the Board of Selectmen deny the document, the Commission could approve it with a majority vote. He recommended holding an Informational Meeting to gather any additional comments that may be incorporated into the document before the final Public Hearing.

The Affordable Housing Plan has been completed and will be added as an Appendix to the document. Commissioner Fontneau added that the Town should add to the Regional Hazard Mitigation Plan.

The Commission conducted a cursory review of the document:

Chapter 2, Mission, Vision, Goals – Commissioner Closius will review the previous draft, written by Commissioner Fontneau and former Commissioner Margaret Caron, and incorporate it into his draft for review and comment. The Commissioners agreed to include the goals at the end of Chapter 2 as well as at the end of each chapter.

Chapter 3, Natural Resources – Commissioner Fontneau will propose edits and additions to the chapter.

Chapter 4, Agriculture and Forestry – Commissioner Fontneau will propose edits and additions to the chapter.

Chapter 5, Historical and Archaeological Resources – Additional photographs for the chapter and addresses for the Notable Places section were submitted and will be added.

Chapter 6, Economic Development – Complete

Chapter 7, Town Infrastructure and Services – Complete

Chapter 8, Housing Stock and Population Change – Complete

Chapter 9, Transportation – Complete

Chapter 10, Recreation and Trails – A sentence(s) directing readers to the overarching map of the trails in the Appendix and a detailed online map will be added.

Chapter 11, Regionalism – Complete

Chapter 12, Statutory Authority – Complete

Goals – Town Planner LaFountain will generate the timeframes for review. The terminology will be changed to *Completion Timeframe (years)*. A narrative description of the timeframes will also be included in Chapter 2.

The Commission plans to hold an Informational Meeting during their Regular Meeting on September 13.

7. NEW BUSINESS – *none*

8. ZONING ENFORCEMENT OFFICER'S REPORT/INLAND WETLANDS AND CONSERVATION COMMISSION REPORT – *none*

9. TOWN PLANNER REPORT

Town Planner LaFountain informed the Commission that, due to the primaries, their next meeting will be held in Conference Room 2.

10. CORRESPONDENCE – *none*

11. PUBLIC COMMENT – *none*

12. PLUS DELTAS

Chairman Smith thanked everyone for their patience and conduct and commended them on their progress on the POCD.

Commissioner Closius commended Chairman Smith on his handling of the Public Hearings.

Commissioner Volberg concurred and expressed his appreciation of Town Atty. Byrne and Town Planner LaFountain for their guidance.

13. ADJOURNMENT

M/S/C: Shelley/Smith, to adjourn the meeting 8:17 p.m. Discussion: None. Voice vote, 5-0, all in favor.

Respectfully Submitted by: Agnes T. Miyuki, Recording Secretary for the Town of Salem