

ZONING COMMISSION
NOANK FIRE DISTRICT
10 WARD AVENUE
NOANK CT 06340

Minutes of the Regular Meeting

Date: Tuesday, November 16, 2021

Location: Noank Fire House, 10 Ward Avenue, Noank

Commission members present: Rick Smith (Chair), Beth Steele, Blake Powell, Dana Oviatt, Nip Tanner. Others: Elizabeth Yerkes (Clerk)

A. Call to Order, Roll Call: The meeting was called to order at 7:00 PM. A link to the MP3 recording of the meeting is: https://1drv.ms/u/s!ApV_BVCbHuQwsnf5fvtqYzUNBL-V

Chairman's Remarks: Noank Fire District's new website <https://noankfiredistrict.com/> has a Planning and Zoning tab. On it is the current zoning ordinance document. A re-formatted version for easier on-line use will be uploaded soon.

B. Election of Officers

1. Motion: to nominate Rick Smith as Chairman, Two-Year Term (Steele/Tanner). No other nominations. Tanner asked if Smith would be present for most meetings. Smith responded yes. Motion carried unanimously.

2. Motion: Beth Steele nominated as Vice Chairman, One-Year Term (Powell/Oviatt). No other nominations. Tanner asked if Steele was "okay with chairing whatever comes up in Rick's absence." Steele replied yes. Motion carried unanimously.

C. Public Hearing – None

D. Public Comment - Issues Not on the Agenda – None

E. Application for Architectural Design Review

1. Consideration of the Application of Peter J. Springsteel, Architect LLC for John and Lauren Watson, 215 Elm Street to infill existing porch and deck addition to a single-family dwelling. The architect described home styles on surrounding properties, and using elevation drawings, showed existing and proposed porch and addition work. A cape-style house, 215 Elm St. was built in 1745, said the owner Lauren Watson. A deck is being added. Most of the addition is under existing porch. Enclosing porch and extending roof line out over new porch, essentially pushing porch out to corner of house. Matching materials – with existing cladding; double-hung windows to remain consistent with existing windows, using painted trim to match existing. No questions were asked.

Motion: to accept and approve application for certificate of design appropriateness (Steele/Powell).

To determine that, 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 as complete, and to approve the application of Peter J. Springsteel, Architect LLC for John and Lauren Watson, 215 Elm Street, for a certificate of design appropriateness to infill existing porch and deck addition to the single-family dwelling because it meets the criteria set forth in Section 2.26 of the Zoning Ordinances for the Noank Fire District.

No discussion. Approved unanimously.

F. Application for Home Occupation Permit

1. Consideration of the Application of Ronald and Elizabeth Greene, 44 Brook Street for a Home Occupation Certificate to operate an art gallery (paintings) on the premises.

Chair asked Greenes to summarize their business and objectives. Mrs Greene read a prepared statement that included a brief artist's biography, itemized responses to ordinance items, and rebuttal and response to neighbors' complaints about signage and parking on Brook St. Mrs. Greene said that she paints, illustrates children's books; that she is the only artist whose work would be shown; that there is ample parking off-road, and that the gallery would be open to visitors by appointment only, "with an occasional open studio like most artists do, a few times a year."

The applicant read and then referred to pertinent Groton Regulations 18.2.4, "home occupation – customary." Mrs. Greene said that the home and gallery architecture is in character with neighborhood. Mrs Greene referred to 2.15: limits on permitted Home Occupation uses. 2.15.1 - articles sold on premises must be only those created on premises, no residential display on premises in connection with the occupation. Mrs. Greene responded that she would sell work that she alone created.

2.15.2 – storage and use of materials in dwelling only. She said, "A single sign is allowed in conformance with Section 10 of Zoning ordinance." Mrs Green said that her painting materials and supplies are used and stored in dwelling only.

2.15.3 – a 25-percent maximum gross floor area ratio limit to Home Occupation. Mr. Greene presented a sketch with gallery dimensions and stated that his calculations showed the gallery F.A.R. calculation is 19.9 percent. He said on a prior visit to zoning he presented this calculation to the ZEO.

2.15.4 – Mrs Greene repeated that she is the only person engaged in the occupation.

2.15.5 – off-street parking for non-resident employees. Mrs Greene said they have two off-street parking spaces available and no employees. Mr. Greene showed sketch of proposed parking from original designs and said that new addition of barn (gallery) has three spaces available.

2.15.6 – occupation and conduct shall not impair residential character of premises / neighborhood. Mrs Greene said the building does not create smoke, noise, vibration or impair / degrade the neighborhood character.

2.15.7 – home occupation certificate shall be granted when Zoning commission finds proposed occupation conforms to all requirements of 2.15 and applicable regulations. Any operation without certificate is in violation of regs, and certificate is valid for five years.

Mrs Greene catalogued the sequence of events with building the gallery, applying for the H.O.C., and complaints from neighbors re: on-street parking, events at site, permanent sign on property, display on property.

Mrs Greene said the 50-person gathering in the complaint was a family gathering, that police told her that Brook St. parking was not illegal, and that she made and erected the sign in anticipation of the gallery getting the certificate of home occupation and that a white bag covered it. She stated that she had placed five paintings on her lawn during that day only for family and friends to see on their way to the house for the gathering.

Double-parked cars on street: Mrs Greene stated that the cars were parked legally. That cars were not double-parked, they parked parallel to Brook St. curb and speculated that there is sufficient space for emergency vehicles to pass and for two-way traffic.

Commercial retail business: Mrs Greene denied this, and said she sells her paintings from her website. The gallery is to view work, she stated, not a commercial retail business. She stated that she does not frame, do custom work, or sell products.

She stated that all sales are transacted online, that the gallery is not a retail business. Mr. Greene stated that the paintings are stored in and shipped from a Plainfield office.

Newspapers notified: Mrs Greene said “Yes,” she had notified newspapers (of the Grand Opening), “as we should have had the certificate by now and you must contact media well in advance of an event.”

A second sign and traffic: Mrs Greene acknowledged erecting a second sign. It announced a Grand Opening on Nov. 14 from 3 to 6 p.m. She had assumed that she would have the H.O.C. by the Nov. 14 Opening and said “unfortunately, it was too late to change the date, as articles began to come out in publications” about the upcoming event. The second sign was to “alert art-loving Noankers of the event,” she said, and likened it to a yard sale sign. Mrs. Greene said this was the fifth time she and Mr Greene have tried to obtain the H.O.C. from NZC.

Chairman Smith thanked the Greens for the presentation. He clarified that prior actions of applicants have no bearing on review of the application, with one exception: that the commission can ask questions about complaints received and can consider the applicant’s prior actions in context of complaints and responses. Two things to review: definition of Home Occupation in 18.2.40 and eight conditions in section 2.15.

Tanner mentioned applicant's use of the term "customary" and asked, What is a customary home occupation? He cited American Society of Planning Officials 1953 definition: "customary" is a common Planning term; that it refers to what is customary in the area in question; and explained that ASPA bulletin said what is "customary" in one place may not be so in another. How many other home-based art galleries are there in Noank FD, Mystic, Groton?

Applicants did not know. Mr Greene said there had to be a first at some point.

Tanner said his Google search found one between Essex, the Conn. River valley, along shoreline and into Westerly, RI. Tanner said it was vary rare, and the occupation has to be "customary" to satisfy the definition. Tanner suggested that the Greenes do more homework and return to show commission that the Home Occupation is not unusual, not rare, that it is "customary".

Mrs Greene replied, "I don't need to know other ones, I'm asking you to give me mine."

Oviatt told applicant that to grant the certificate the commission has to see evidence of the business being "customary."

Steele read Reg 18.2.40, and asked Tanner whether the word "customary" referred to the residence or the district? Tanner said his understanding is that it was the occupation that is customary as a home-based activity in the geographic area under consideration. He elaborated that in 1953 doctors practiced in their homes and that artists worked in their homes and that was customary; "however," he said, "an artist is not a gallery."

Steele asked Mrs Greene about an apparent discrepancy in her presentation. Mrs Greene's claim that it was a by-appointment-only gallery is at odds with also being open to the public at large via advertised events.

The applicant stated that the Grand Opening was a single one-time event, an open house. Steele sought clarification: if NZC were to grant the certificate, "there's not going to be other open houses?"

Mrs Greene replied that there would be an occasional open studio a few times a year.

Steele said if NZC grants the certificate, it would have specific outlines and conditions. Mrs Greene repeated that the gallery would have an occasional open studio. Mr. Greene stated that if the occasional open studio is a stumbling block (to obtaining the certificate) they could have it only as an appointment-only, not as an open-door operation.

Powell asked Tanner about Reg. 18.2.40 and whether the occupation of artist is customary. Chairman Smith said Noank's history of art galleries in Noank is that they were probably all non-conforming uses. Powell asked, is the occupation customary, or is using it as existing gallery customary?

Oviatt asked, if NZC approved this application, would it set a precedent for what is considered customary in Noank. Oviatt clarified Tanner's point: that the home occupation of art gallery is not customary in Noank. Tanner responded that the a gallery in the home is not customary home

occupation, and stated that it would set precedent for allowing other occupations that operate as businesses and are not customary in a residential zone.

Steele, reading from the Planning document cited by Tanner, commented that “occupations customarily conducted in the home” helped her understand the notion of “customary”, as distinguished from an occupation conducted in the community at large. The issue is, Are there other art galleries in people’s homes in the fire district?

Tanner said No. He said that art galleries exist in the region but operate in commercial districts.

Chair said the difference between studio and gallery is germane: studio is one person at a time, appointment only, not a lot of parking; gallery is more like a retail establishment, a lot of people can visit and park at once, regular hours are announced in advance. He stated that the Greenes’ 2017 application for the structure was for an art studio. Smith continued, that only in context of complaints that came to the NZC did he factor in prior activity that occurred without the certificate: advertising for a gallery, many cars parked on street for same events. Chairman said it sounds like a gallery and sounds like a retail establishment.

“This is an R-20 zone,” he told the Greenes, “there are no retail businesses allowed” without special exceptions, permits, and site plans – things the commission does not look at with a Home Occupation certificate. The inconsistency, he said, is that a studio is for an artist to paint, a gallery is something different.

Chairman Smith said that he was not persuaded by applicant’s claim that an open house will only occur occasionally. He said he sees it as a studio maybe; as a gallery definitely not. Chair read from the Home Occupation definition, “which does not alter the exterior of property or affect the residential character of the neighborhood.” A large structure with many people coming at one time creating lots of street parking sounds like an event facility for viewing art, and not like a studio. He cited an accountant home occupation on the same street that is consistent with definition of home occupation.

Job of commissioners is to parse the application and think what may happen in future if certificate is granted. The other part of the definition, “Does not affect residential character of neighborhood,” Chairman said, troubles him, “given what has gone on” in prior months, which did affect the neighborhood. The applicant’s own document contradicts her presentation: a photo of the sign “Art Sale Sunday, Nov. 14, 3 to 6” does not say “by appointment only,” it does not contain a phone number. Chair said he is more troubled by than leaning toward approval of the application.

Mr. Greene responded that the C&D order said to remove the sign. It was the sign that said “by appointment only” and was removed.

Steele asked about discrepancy between Town’s GIS calculation of square footage and Mr Green’s calculation of 5,200 square feet. Greene replied that structure of the barn was empty inside until September, 2021 when they received the Certificate of Occupancy. The Town’s GIS card lacks the barn, Tanner stated.

Chairman suggested how NZC can make the application acceptable – one person at a time only, parking off-street, if NZC rules allow. Chair said he does not favor approval if it produces parking and behavior of the past few months, which is disruptive to the neighborhood and is inconsistent with the regulation. Mr. Greene commented that art sale and yard sale were similar; Chair responded that “not everybody gets a home occupation certificate to allow them to operate a business out of their home though.”

Steele said NZC needs to address cars, parking. She said Brook St. is not a straightaway, it is a steep hill. If she were to approve this, she would want “absolutely no parking on the street. None.” On-street parking there is dangerous and constrains neighbors’ view of access to Brook St. She would limit it to on-site parking only. She had reservations about the number of spaces for possible future employees. She asked, If this is by-appointment only, is it necessary to have eight separate car spaces?

Oviatt commented that once NZC looks for ways to approve this, then NZC has to ensure conditions are met over the years. He agreed with Tanner: the definition of “customary” has not been met with Greene application. While sympathetic to the applicant, Oviatt said, “I’m working for everybody.” He does not wish to set precedent for retail establishments in R-20 zones.

Motion: to deny the application without prejudice because it does not meet the general standard for a customary home occupation (Tanner /Oviatt) Passed 4-0-1 (Steele abstained)

Discussion: Powell said applicants have not presented evidence that the home occupation does meet definition of “customary.” Chair supported motion and said denial without prejudice allows applicants to return with more information and gives NZC time to consult ZEO on qualifying conditions of possible certificate. Chair would not approve the certificate if it promotes conditions that generated neighbors’ complaints.

G. Approval of Meeting Minutes - Regular Meeting of October 19, 2021. Approved without objection.

H. Approval of ZEO Report - October 2021. Approved without objection.

Comments: Tanner stated he understood limits on what can be discussed about enforcement of STR. He wants some basis to inform the community that action is taken on STR enforcement. Powell agreed, What’s the point of having an “enforcement” section on the ZEO report if it’s always empty? Chair said that counsel and ZEO advised not to discuss in public and said it will be discussed under item I.

I. Old Business

1. Update on STR issues

Chair said ZEO issued 19 letters on Oct. 20 giving recipients until Nov. 2 to respond. Most responded. Responses included: We’re no longer listing as STR, and, Have already rented to a LTR. Periodic monitoring will continue. On Nov 4, ZEO issued 6 C&D orders to those who

did not respond. Some responses to those have been received. Next steps are in counsel and ZEO's purview.

2. Consideration of P.A. 21-1 - Cannabis Establishments

Powell said he did not think there was a reason to increase commercial activity in Noank. Does not see benefit to community. Steele said, "I'm also a 'No'." Chairman Smith said NZC would have to create a text amendment (i.e. to prohibit such establishments), but did not think Noank needed a prohibition at the time the PA takes effect.

3. Consideration of P.A. 21-29 - Housing & Parking

Chairman said Tanner suggested a useful option: to establish what in the PA benefits Noank. Then at the right time, opt out of the state mandates. Oviatt asked, should NZC opt out first. Tanner said public input is needed, educating public is needed "so they know what they're going to get." Opt-out deadline is Jan. 1 2023. Chair agreed with Tanner, that "if we opt-out first, we'll lose momentum." Chair said there is value to Noank to preserve and enhance the opportunity for LTR, and the PA rules support reducing parking congestion.

4. Consideration of FEMA Look-Back Period

Tanner observed from last month's public comment on the topic: those most knowledgeable about climate change and sea level rise were unanimous about not changing the look-back period from ten years. Other public input was commercially oriented and architecture-preservation oriented. Powell commented that if you don't have many resources, the shorter look-back allows owners flexibility to make their homes resilient. Oviatt mentioned Jim and Patricia Baker's letter and the costs of a ten year look-back period. He said the letter was carefully reasoned on why to consider the one- and two-year look-back.

Chairman said he does not understand the inconsistency of every municipality doing something different.

Steele favored dropping to a two-year look back. Powell asked the substantive difference between two- and one-year look-back. Tanner replied, "if it's one, people can play the game of avoiding it by only doing half the work in one year." He said a two-year look-back makes it harder to trigger the FEMA requirement.

Powell said the purpose of lowering the number at all is to allow owners the flexibility to do this.

Discussion about details of calendar year vs permit period, and Stonington's extant look-back. Oviatt mentioned Steever's offer of Sustainability Task Force recommendations, and O'Donnell's offer of policy task force recommendations.

Tanner said the rule does not need to change, the reason the rule exists needs to change (i.e. climate change.)

Oviatt asked what difference will ten-year vs two-year look-back make to issues in Jim's (O'Donnell) letter and housing affordability? Powell said if this gives people a chance to replace roof and windows people can do a lot of good, and that it "is not about being able to sell your home," but what people can do to improve the house's resilience.

Chair asked what would NZC take to public comment in next five months?

Motion: to reduce look-back to two years (Steele/Powell).

Discussion: Chair said NZC will start a text amendment to lower look-back to two years with ZEO's advice. This begins the process, he said, and course correction can be made. Since there will be several text amendments we'll look to an omnibus text amendment. Tanner commented on the procedure to undo a motion.

Motion passes 4-1.

J. New Business – none

K. Adjournment – 9 p.m.