

SALEM ZONING BOARD OF APPEALS

REGULAR MEETING

MARCH 24, 2011

Present: L Cole-Chu, J. Bernier, K. Bellandese, G. Balavender, Alt., S. Kozlowski, Alt, M. Mullin, B. Nortz

Absent: S. Crisanti, Alt.

Guests: See File Copy

Call to Order: Chairman L. Cole-Chu called the meeting to order at 7:31

Pledge of Allegiance: recited

Seating of Alternates: NA

Public Hearing:

#11-01 S. & J Gadbois, owners for property at 42 & 44 Lakeview Avenue, Salem, CT 06420, Assessor's Map #21, Lot #49, & 50. Request for a variance of Section 5A.2.1 of the Salem Zoning Regulations (minimum lot size requirement) from 40,000 sq. ft. required to 37, 056 sq. ft. requested to allow construction of a year round dwelling)

L. Cole-Chu asked if there was any objection to not reading for the record the Public Notice, there were none. He asked if the mailing tickets were submitted, they were submitted by the applicant to the Town Hall.

Attorney H. Heller appeared for the applicant. He described the three properties the applicant owns. The property at 42 Lakeview is by regulation a seasonal home with 20, 223 sq. feet and 76 ½ feet of frontage. The 44 Lakeview Avenue parcel is improved with an existing structure. The parcel is 16, 833 sq. ft. with 42.6 feet of frontage. In January of 2011 Gadbois acquired a third parcel, a right of way, adjacent to the properties which give an additional 15.15 feet of frontage. This results in the aggregate lot areas of 37, 056 sq. ft. from all three properties.

The Town Planner's memo was submitted into the record (See File Copy) as well as an email from Mr. Heller (See File Copy) that includes minutes from the ZBA in 1974. In the memo from Town Planner, Mr. Heller points out that there was a special application filed in 1974 for seasonal use which was approved subject to

sanitary conditions. He stated the functions of the ZBA have not changed since 1974.

L. Cole-Chu read the decision of the ZBA in 1974 and asked if Mr. Heller could clarify the meaning of the decision. Mr. Heller interpreted it as the applicant seeking relief for a variance of the regulations. There was no order from the ZEO at the time; therefore, it must have been for a variance.

H. Heller stated the current application is asking for three variances which, if approved would authorize the properties to be combined for year round use. They would like to combine the three parcels by deed into one, for a year round residence. The applicants would remove the two existing structures. The year round dwelling would comply with all the setback regulations. What the applicant is asking for are three things:

- Relief from the 40, 000 sq. ft. lot area requirement for a year round residence
- Lot frontage variance, there is now 130 feet, 150 feet is required.
- Minimum lot width requirement

Mr. Heller informed the Board the applicant tried to buy land in order to conform to the minimum lot requirement but all the surrounding land is also non conforming.

M. Heller described the three deeds and showed the boundaries on the maps provided.

There was discussion on the right of way and if it can be used to calculate square footage. It was the Town Planners opinion that it could not be used. The Board reviewed the Zoning regulation which applies-section 3.2. It was not clear to some members if the section could be interpreted as not allowing the owner to use for square footage. It was decided that the applicant did not include the right of way on the application and the size would not make the difference as to conforming to minimum lot size.

M. Heller stated there are two findings the Board needs to make:

- Exceptional difficulty or unusual hardship that is unique to this property and not others in the area.
- Variance requested is in conformance with the comprehensive plan that is embodied in the zoning regulations as they have developed over time.

He stated it is in conformance with the comprehensive plan. The request is for a residential use which is permitted by right, assuming the proper bulk requirements are met. The memorandum from the Town Planner states there is a mix of seasonal and year round properties on Lakeview Avenue. He stated it would lessen density in the area if allowed to combine the properties instead of having two seasonal residences on the individual properties.

He stated with respect to the difficulty or unusual hardship of the property the applicants are proposing to combine the three existing tracts into one tract by deed. They have aggregated all of the land which is available for acquisition in that area without making other properties non conforming. They have done everything they can in order to come as close as they can to meet the letter of the requirement.

Mr. Heller presented for the record, case law (see file copy). He stated the cases hold that the effect of the variances granted, is to reduce or eliminate an existing non conformity. The Board has the authority to grant a variance without making the traditional findings of difficulty or hardship. By granting the variances the Board will be eliminating non conformities that currently exist with respect to side yard setbacks.

He discussed the purpose clause which is to protect the environmental quality of the lake. He stated many of the septic systems are old and would not meet the requirement of the current health code. If application is approved the new septic will comply with new health codes and there will be no additional septic burden. H. Heller feels the legal requirements for the variance have been met and satisfied.

M. Mullin stated once the variance is issued the Board cannot control where the house is placed on the property. He stated the Board cannot put conditions on approval.

H. Heller stated the residence will conform to setbacks.

H. Heller stated he is conceding for the record the property is not year round, if they thought it qualified for year round residency they would not be asking for a variance.

L. Cole-Chu stated there are now two non conforming lots which can have two seasonal dwellings, if the application is approved it will be one lot that will be less non conforming.

H. Heller agreed and stated it would be less non conforming in use and bulk.

The Board discussed the issue of the right of way and if it could be added to the square footage of the two properties at 42 and 44 Lakeview Avenue.

L. Cole-Chu stated that conditions on the approval were not necessary.

L. Cole-Chu asked for Public Comment:

Chris Lindo asked the Board what guides them when they make a decision.

L. Cole-Chu stated that state statutes define the powers of the Board but, the Board is given discretion when making decisions.

D. Bourdeau stated he is an abutting property owner and has no problem with the Board approving the application. He thought it would be an improvement to what exists there now.

M. Mullin was concerned about approving the application for year round use based on the size of the lot. He stated it was the job of the Planning and Zoning Commission to set regulations for lot size.

H. Heller stated the application should be judged on its own merits and the Board can not disregard the case law which was submitted when making the decision.

M. Mullin stated there is not a special hardship because the applicant is allowed to have a dwelling. It opens up doors as it relates to the zone if the application is approved.

M/S/C (Nortz/Bernier) to close the Public Hearing at 8:50. Vote: Approved Unanimously.

Recess called at 8:58

Back from recess at 9:06

L. Cole Chu acknowledged a letter from abutter Mr. Osipiwitz. (See File Copy)

M/S/C (Nortz/Bernier) to grant application # 11-1, S. & J. Gadbois, owners, for property at 42 & 44 Lakeview Avenue, Salem, CT 06420, Assessor's Map # 21, Lot 49 & #50. Request for a variance of Section 5A.2.1 of the Salem Zoning Regulations (minimum lot size requirement) from 40,000 sq. ft. required to 37,056 sq. ft.; frontage minimum of 150 feet required to 119 feet requested; minimum lot width of 150 feet

required to 130 feet requested to allow construction of a year round dwelling. The Board finds that granting the application will reduce zoning nonconformities and increase consistency with the Salem Zoning Regulations, the Plan of Conservation and Development, and the neighborhood character, houses at parcels 14-30, 40 and 46-58 Lakeview Avenue being year-round on smaller parcels than the lot proposed. **Vote: Approved. In favor of; Bernier, Belandese, Cole-Chu, Nortz. Opposed; Mullin**

Receipt of Application(s) to set Public Hearing-None

Approval of Minutes

M/S/C (Mullin/Bernier) to approve the August 2, 2010 minutes as amended.

Discussion: L. Cole-Chu reminded the Board of the ADA information he submitted for the Public Hearing on August 2, 2010. He would like the information to be included with the official copy of the minutes as well as the file.

Page 1, last paragraph add, (See attached memo)

Vote: Approved. In favor; Bernier, Bellandese, Cole-Chu, Mullin. Opposed: none, Abstaining: Nortz

(G. Balavender leaves at 9:17)

M/S/C (Bellandese/Bernier) to approve the July 22, 2010 minutes. Vote: Approved. In favor; Bernier, Bellandese, Cole-Chu, Mullin. Opposed; none, Abstaining; Nortz

Old Business-none

New Business

M/S/C (Nortz/Bellandese) to amend agenda to add election of new officers to agenda. Vote: Approved Unanimously

M/S/C (Mullin/Nortz) to elect L. Cole-Chu as Chairperson, M. Mullin as Vice Chairperson, and J. Bernier as Secretary. Vote: Approved Unanimously

Correspondence:-none

Adjournment: M/S/C (Bellandese/Nortz) to adjourn at 9:27

Respectfully Submitted

Sue Spang

Recording Secretary