

**TOWN OF SALEM
ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
THURSDAY, JULY 28, 2016 – 7:30 P.M.
SALEM TOWN HALL**

1. CALL TO ORDER

Chairman Dutch called the meeting to order at 7:30 p.m. after establishing a quorum.

2. ROLL CALL. Seat Alternates for any Regular Member Absent.

Present were Board Members Ken Bondi, Charlie Dutch, Michael C. Jensen, Denise Orsini, Terri Salas, Michael Flugrad (alternate), and Rebecca Nortz (alternate). Absent was Board Member Emil Casciano. Also present was Zoning Enforcement Officer (ZEO) Liz Burdick.

3. APPROVAL OF MINUTES OF PREVIOUS MEETING(S): November 19, 2015
M/S/C: Orsini/Bondi, to approve the meeting minutes of November 19, 2015 as submitted. Voice vote, 5-0, all in favor.

4. RECEIPT OF APPLICATION(S) TO SET PUBLIC HEARING DATE(S): *None*

5. PUBLIC HEARING(S):

A. ZBA#2016-01 – 52 Lakeview Avenue (Map 21, Lot 53) – Application of John Fontana for variances of Section 5.A.2.3 (SR YR Rear and Side Yard Setbacks) to construct a 14'x39' rear deck, 8'x10' upper rear deck, 4'x29' side deck and a/c pad/unit.

ZEO Burdick read the Public Hearing legal notice, which was published twice in *The Day* newspaper, as required by CT General Statutes, into the record. Copies of the certified mail receipts of the notifications to the abutting properties are on file and approval for the location of the decks and A/C Unit by the Uncas Health District has been received. The application is for the following variances:

- 1) 24' variance of the required Seasonal Residential (SR) minimum 25' side yard setback to construct an a/c unit 1' from the east side boundary line. A/C Condenser Units are, typically, required to meet setbacks, but, in this case, it is located up against the residence and there are no alternative locations for the unit.
- 2) 22.5' variance of the required SR minimum 25' side yard setback, a 43.5' variance of the required 50' minimum rear yard setback and a 23.3' variance of the required SR minimum side yard setback to construct a 14' x 39' x 4' x 43' rear & side deck a distance of 2.5' to the east side boundary line, 6.5' to the north rear yard boundary line and 1.7' to the west boundary line.
- 3) 7' variances of the required SR minimum 25' side yard setbacks *and* a 35.5' variance of the required 50' SR minimum rear yard setback to construct a 10' x 8'

Zoning Board of Appeals Regular Meeting Minutes
July 28, 2016

upper level deck a distance of 18' to the east & west side boundary lines and 14'5' to the north rear boundary line.

The lot is an existing non-conforming lot located in the seasonal residential zone on 0.15 acres, with 45' of frontage on Lakeview Avenue. The home has been established for year-round use. In addition to the replacement of the pre-existing non-compliant stairs and landings with upper and lower decks and the installation of an A/C pad/unit, the Applicant is proposing the removal of the shed and garage, both of which are non-conforming. A comment has been placed for the final plan review regarding the correction of the distances to the A/C unit and the upper level deck and their respective variances on the zoning compliance chart from Zone A to Zone SR. Photographs of the property, depicting the upper sliding glass doors, which lead to nothing and are covered with a lattice for safety reasons, and the lower level slider, which leads to the non-compliant stairway, were circulated for review.

Applicant John Fontana stated that he is applying for a variance for the construction of a deck on his property located at 52 Lakeview Avenue. The property does not meet the egress from all three doors of the structure and is non-conforming. He is also proposing demolishing the existing garage, which has been a contentious issue for the Town.

In response to Board Member Jensen, the dwelling is a non-conforming structure and no decks were ever constructed. The hardship the Applicant is citing is with the non-compliance of the fire egress and the non-conforming lot, itself, due to its size. Both the lot and the structure, which is located in the rear-yard setback, are non-conforming. He noted that the property has been deteriorating for many years and would like to bring it up to code. It was also noted that both the garage, which is greater in size than the proposed deck, and the shed are slated for removal, decreasing the amount of the property's non-conformity. The garage, which was once turned into an apartment, also poses a safety issue in that it does not provide adequate site lines for the neighboring driveway.

Chairman Dutch asked if anyone would like to speak in favor of the application.

Stu Gadbois, 42 Lakeview Avenue, who has resided next door to the property for approximately 70 years, spoke in support of the variance. He stated that the Town expended numerous funds for legal costs due to people residing in the garage, which is located directly in his line of site east of his driveway. The removal of the structure would be an immense improvement of the property and increase the safety of the area. He has no issues with the construction of the decks. He also noted that, according to his lawyer, there have been court cases in the State of CT in which a hardship was not necessary for the approval of a variance.

Chairman Dutch asked if there were any additional members of the public who would like to speak in favor of the application. There being none, he asked if anyone would like to speak in opposition of the application. There being none, Chairman Dutch asked if anyone had any additional questions or comments.

M/S/C: Jensen/Salas, to close the Public Hearing for ZBA#2016-01. Discussion: None. Voice vote, 5-0, all in favor.

The Board began their deliberation on the proposed variance. Board Member Jensen stated that, normally, the expansion of a non-conforming lot would be discouraged by the Board, unless a significant hardship to the land was demonstrated by the Applicant. However, the removal of the shed and garage and addition of the deck would result in a less non-conforming property, ensuring that the Board has met its obligations and the Petitioner has also satisfied his requirements. The support of an abutting neighbor is also helpful. Board Member Orsini felt that, while the elimination of the shed and garage would improve the property, the Board should be concentrating on the request of the variance for the deck(s), itself, and it should not affect their final decision. Chairman Dutch noted that the removal of the shed and garage would result in an overall net reduction in the non-conformity of the property. Discussion ensued regarding the Owner's ability to re-build a shed or garage of the same size, height, and location. The proposal indicates that the structures must be removed upon approval of the variance as indicated on the site plan. Some assurance should be provided to the Board that the structures would not be rebuilt.

M/S/C: Jensen/Orsini, to grant the Petitioner's request for a variance as stated in items 1, 2, and 3 of Zoning Enforcement Officer Liz Burdick's memo, dated July 21, 2016, and were read into the record during the Public Hearing with the Petitioner's agreement to remove both the garage and the shed and are not to be rebuilt, except in accordance to the current Zoning Regulations. Discussion: Minor modifications to the plan will be handled administratively by the ZEO prior to the issuance of the Zoning Permit. ZEO Burdick felt that it may not be proper for the Board to limit the homeowner from building a small structure on the property that would meet the current setback requirements. There is no room for a conforming garage to be built on the property. The time-frame of one-year is provided for the rebuilding of any structure that has been destroyed by fire or natural disaster, but because the removal of the structures in this case are voluntary, the time-frame does not apply. The motion was modified to read:

M/S/C: Jensen/Orsini, to grant the variances as stated in items 1, 2, and 3 of Zoning Enforcement Officer Liz Burdick's memo, dated July 21, 2016, with the condition that the existing garage and shed, proposed to be removed, shall not be rebuilt except in accordance with current zoning requirements as shown on the site plan, dated April 20, 2016, and submitted as part of the application. Discussion: It was clarified that the motion, as stated, notes that the structures are to be removed, not rebuilt. Voice vote, 5-0, all in favor.

- B. ZBA#2016-02-95 Forest Drive Ext. (Map 21, Lot 18) –Application of Eleanor Sullivan for variance of Section 5.A.2.2 (SR Seas. Front Yard Setback) to construct an 8'x10' gazebo over an existing non-conforming deck.

ZEO Burdick stated that the Notice for the Public Hearing was published twice in *The New London Day*, as required by State Statutes, and copies of the certified mail receipts notifying the abutting property owners are on file. The Applicant is requesting a 33' variance of the required 50' Seasonal Residential (SR) minimum 50' front yard setback to construct an 8' x 10' gazebo over an existing non-conforming deck a distance of 17' to the west front boundary line. The existing non-conforming lot is located in the Seasonal Residential Zone on 0.31 acres with road frontage on four sides of the property. The use of the property is for an established seasonal single-family dwelling. For the hardship, the Applicant has noted on the application that the lot is pre-existing, undersized, and irregularly shaped. The residence, including the deck upon which the gazebo has been constructed is also a pre-existing non-conforming structure. The gazebo does not encroach any further beyond the existing deck. The permit was applied for by the Contractor and denied as it is a non-conforming structure, but, unbeknownst to the property owner, the Contractor proceeded to construct the gazebo. The size of the gazebo was corrected to read 8' x 15'. In addition, a letter submitted by the Uncas Health District is also on file and test holes were dug to confirm that the property meets the Public Health Code standards. It was noted that the gazebo, which increases the structure's non-conformity, has already been constructed and is attached to the deck, becoming part of the structure.

Applicant Eleanor Sullivan stated that she has always installed canopies on the deck, which were constantly collapsing as the result of the weather. Due to the cost of constantly installing the canopies, she opted to have a more permanent wooden structure constructed.

Chairman Dutch asked if anyone would like to speak in favor of the application.

Zoning Board of Appeals Regular Meeting Minutes
July 28, 2016

Ken Egan, 97 Forest Drive Extension, whose front door faces the gazebo, stated that he is happy to support the application as he has watched Ms. Sullivan install a number of canopies and tarps of various colors on the deck to no avail.

An abutting neighbor who resides across the street confirmed her battles with the various canopies, noting that she has arrived at a final solution of an ongoing issue by constructing a beautiful structure.

Suzanne Egan, 97 Forest Drive Extension, spoke on behalf of the members of the public who were present, stating that they are all in favor of the application.

In response to Chairman Dutch, the Applicant stated that she has no plans to enclose the structure at any time.

Chairman Dutch asked if anyone would like to speak in opposition to the application. There being none, Chairman Dutch asked if anyone had any additional questions or comments.

ZEO Burdick commented on the extreme irregularity of the lot and the inability of determining the setbacks of the property, which overlap with each other. She added that, though the gazebo has already been constructed, the application should be reviewed as if it has not yet been constructed and, should the variance be denied, the structure will need to be removed. A brief description of the Uncas Health Code Requirements for a B100A Application was provided. The gazebo was inspected and approved by the Building Official in February/March of 2016. During his inspection, the Building Official also confirmed that the footings of the deck would be able to adequately accommodate the extra weight of the gazebo. The gazebo is nailed to the railing of the existing deck and can be moved, if necessary.

M/S/C: Jensen/Salas, to close the Public Hearing for ZBA#2016-02. Discussion: None. Voice vote, 5-0, all in favor.

The Board began their deliberation and agreed that the variance is a minor expansion of a non-conforming use and does not infringe any further than the existing deck. In addition, the support of three of the four abutting property owners confirmed that this was the right thing for her to do.

M/S/C: Orsini/Bondi, to approve the proposed application and grant the variance for the 33' variance of the required 50' setback to construct an 8' x 15' gazebo on the existing non-conforming deck because it does not create additional non-conforming distance past the 17' to the west or the front boundary line and does not extend past the existing deck, expanding a non-conforming or increasing the setback. Discussion: Board Member Jensen suggested modifying the motion to include the granting of the variance as

shown in the site plan, dated February 2, 2016. The motion was modified as follows:

M/S/C: Orsini/Bondi, to approve the proposed application and grant the 33' variance of the required 50' setback to construct an 8' x 15' gazebo on the existing non-conforming deck because it does not create additional non-conforming distance past the 17' to the west or the front boundary line and doesn't extend past the existing deck, expanding a non-conforming or increasing the setback as show in the site plan, dated February 2, 2016, for the property located at 95 Forest Extension Drive. Discussion: None. Voice vote, 5-0, all in favor.

6. **OLD BUSINESS:** None

7. **NEW BUSINESS:** None

A. Election of Officers

M/S/C: Salas/Bondi, to nominate Board Member Dutch as Chairperson of the Zoning Board of Appeals. There being no additional nominations, the nominations were closed. Discussion: None. Voice vote, 5-0, all in favor.

M/S/C: Bondi/Salas, to nominate Board Member Orsini as Vice-Chairperson of the Zoning Board of Appeals. There being no additional nominations, the nominations were closed. Discussion: None. Voice vote, 5-0, all in favor.

8. **CORRESPONDENCE/ANNOUNCEMENTS**

ZEO Burdick stated that new Zoning Regulations in accordance to State of CT General Statutes have been distributed as part of their packet.

9. **ADJOURNMENT**

M/S/C: Orsini/Salas, to adjourn the meeting at 8:49 p.m. Discussion: None. Voice vote, 5-0, all in favor. Meeting adjourned.

Respectfully Submitted by:

Agnes Miyuki, Recording Secretary for the Town of Salem