

Unapproved

**SALEM ZONING BOARD OF APPEALS
May 28, 2009**

Present: Balavender, G., Alt.
Bellandese, K.
Cole-Chu, L. - arrived at 7:39 pm
Diamond, S.
Kozlowski, S., Alt.
Mullin, M.

Absent: Nortz, R.
Vacancy, Alt.

Guests: see attached.

CALL TO ORDER:

In the absence of L. Cole-Chu, chairman, the meeting was called to order at 7:32 pm by M. Mullin.

SEATING OF ALTERNATE(S):

M/S/C (Diamond/Bellandese) to seat S. Kozlowski for L. Cole-Chu. Vote: approved unanimously.

M/S/C (Diamond/Bellandese) to seat G. Balavender for R. Nortz. Vote: approved unanimously.

PUBLIC HEARING(S):

- 1) #09-1 S. Yaworski, 9 Harris Road Extension, Salem CT 06420
Appeal from the decision of the Zoning Enforcement Officer in regard to the determination of seasonal use for property at 11 Gardner Lake Heights, and
Request for a variance of Section 5A.2.1 (Lot Size) for property at 11 Gardner Lake Heights.
Assessor's Map #22; Lot #37 11 Gardner Lake Heights

R. Nortz arrived, but stated that she would be recusing herself for this application and that L. Cole-Chu would be a few moments late.

In the absence of L. Cole, Chu, M. Mullin assumed the chair.

Legal Notice read.

All Certificates of Mail received as per the regulations.

The Board heard the Appeal portion of the application:

(S. Yaworski, applicant, stated, for the record, that Attorney Heller would be representing her for this application.)

Attorney H. Heller appeared for the applicant:

Requested that R. Nortz state the reason(s) she was recusing herself.

R. Nortz stated that it was because she had at one time lived next door to both 11 and 9 Gardner Lake Heights, the subjects of both public hearings this evening, for twenty years.

Prior to 2008, a map, of which there was only one copy, showing the properties in the Gardner Lake area color-coded as to their use as seasonal or year-round was the document used by town officials and title searchers to determine the use of said properties.

L. Cole-Chu arrived at the meeting.

This map was found to be missing in 2008 and the Planning and Zoning Commission, using the Zoning Enforcement Officer (ZEO) for research, tried to recreate the map.

As a result, all the lake area properties were redetermined as to use. 9 Gardner Lake Heights was a year-round use, but was determined to be seasonal by the ZEO using the reasoning that the year round use was abandoned.

Presented:

[Exhibit #1] - copy of Section 8-2 of the CT General Statutes, the enabling legislation for zoning. (3 pages)

At this time, Attorney Heller requested to know who was seated on the Board.

During confusing Board discussion:

M/S/W (Diamond/Bellandese) to have L. Cole-Chu assume his chairmanship of the meeting.
MOTION WITHDRAWN.

M/S/F (Mullin/_____) to have L. Cole-Chu take over as chair.
MOTION FAILED, for lack of a second.

G. Balvender stepped down and recused herself.

L. Cole-Chu assumed his chairmanship of the meeting.
(Attorney Heller stated that he had no objections when asked.)

The Board's consensus was to seat S. Kozlowski for R. Nortz.

Attorney Heller resumed:

Presented:

[Exhibit #2] - Copy of John V, Magnano, et al v. Zoning Board of Appeals of the Town of Westbrook, et al. (8 pages)

[Exhibit #3] - Copy of Perry Taylor, et al v. Zoning Board of Appeals of the Town of Wallingford, et al. (12 pages)

[Exhibit #4] - Copy of Cummings v. Tripp (1 page)

Stated that *Exhibits #1 - #4* would also be used for the public hearing regarding application #09-2.

Further presented:

[Exhibit #5] - Letter of 3/16/09 from M. Chinatti, ZEO, to S. Yaworski regarding her redetermination of seasonal use for 11 Gardner Lake Heights.

[Exhibit #6] - Copy of the Real Estate Tax Bill for 11 Gardner Lake Heights, Grand List of October 1, 2006.

[Exhibit #7] - Copy of the Real Estate Tax Bill for 11 Gardner Lake Heights; Grand List of October 1, 2007.

Attorney Heller stated that in 1993 the property was transferred to S. Yaworski and Mr. Civitello, Sr. was given life use. Upon Mr. Civitello's death, the property was transferred to F. Civitello, Jr., M. Civitello, S. Yaworski, and M. Toth.

[Exhibit #8], **[Exhibit #9]**, and **[Exhibit #10]** - Copies of three (3) CT MLS (Multiple Listing Service) Real Estate Listings by Weichert Realtors - Suburban Properties for the property at 11 Gardner Lake Heights. **#8** Listing of 5/14/07 (a few months after Mr. Civitello Sr.'s passing); **#9** Relisting of 9/22/07; and **#10** Relisting of 9/18/08.

Attorney Heller stated that these three separate listings to sell the property as year-round show the appellants' intentions to not abandon the year-round use.

[Exhibit #11] - Letter of 4/04/09 of B. Grisafe, 1 Fett Road, to M. Chinatti; sworn statement as to the year-round use of 11 Gardner Lake Heights by F. Civitello, Sr. for thirty (30) years.

[Exhibit #12] - Memo of 2/19/09 from V. Vesey, Salem Building Official, to M. Chinatti, ZEO, stating that the single family residence at 11 Gardner Lake Heights is code compliant.

[Exhibit #13] - Copy of approved Building Permit application for reroofing of house and garage at 11 Gardner Lake Heights.

From the late 1950s until Mr. Civitello's death in 2006, there is no evidence anywhere to show that the year-round use of 11 Gardner Lake Heights was to be abandoned.

S. Yaworski:

It was always intended to sell the house as a year-round use as it had always been used. The house was maintained, repaired and improved, all for year-round use.

Attorney H. Heller:

The lot does not meet the lot area requirement for year-round use in the SR Zone because at the time the lot was created, there was no zoning in Salem.

The property became non-conforming in 1995, when the SR Zone was adopted.

S. Yaworski:

Her father built the house before 1960 and moved into the house in 1962; all the children went to the Salem School.

F. Civitello, Jr.

He moved into the house in 1962 and attended Norwich Free Academy.

L. Cole-Chu, chairman, reviewed what was provided for the record by the applicants; Attorney Heller agreed as to the documents.

Attorney H. Heller:

Section 5A.4 was created by the PZC as a "safe harbor".

The ZEO, in her 3/16/09 letter, conceded that the documentation submitted established the year-round use, but, when the address on the tax bill was changed, which was after Mr. Civitello, Sr. passed away, she determined that at that time the non-conforming use was terminated.

Was it the intent of the children who inherited the property to abandon the year-round use?

No, the Real Estate Listings prove that a few months after Mr. Civitello Sr.'s death, the property was placed for sale as a year-round home and is presently is still listed for sale.

The Board took a five (5) minute recess.

L. Cole-Chu, chair:

His opinion is that it appears that this whole situation was created by the death of Mr. F. Civitello, Sr.

Section 5A.4.1b) of the Zoning Regulations fails to allow for the death of Mr. Civitello Sr.

Attorney Heller:

After the loss of the map, in order to help the people of the lake area whose homes had been determined seasonal, the PZC tried to

enact a regulatory mechanism by which they could establish their year-round status.

They did not realize that there would be some properties, which could not accomplish that, as this one.

The State Statutes allow, by review of the case law presented in evidence tonight, that a non-conforming year-round use could not be terminated without the intent of the owner to terminate that use.

There has been no intention shown for the determination that the year-round use was terminated.

M. Mullin submitted:

[Board's Exhibit #1] - Copy of a spreadsheet titled *SEASONAL/YEAR ROUND FINAL DETERMINATIONS*, prepared by M. Chinatti, ZEO on 9/28/08.

He stated that two (2) years of hard work by the ZEO went into the document and the town has had a significant legal expense since 1980 in regard to seasonal/year-round use in the lake area.

Public Comments:

- W. Schultz, 19 Forest Drive: This case does not belong here; the house became their year-round residence in 1962 and was occupied year-round until the death of F. Civitello, Sr.; the Zoning Enforcement Officer is wrong.
- F. Civitello, Jr.: There are year-round houses on cinder blocks in the lake area on less than a quarter of an acre.
- J. Cale, 5 Fett Road: Had to go through this same thing because his home was determined to be seasonal even though it had been lived in by his father, mother, his brothers and sisters year-round and they all attended the Salem School; Frank Civitello, Sr. lived in the house year-round.
- K. Brazee, 16 Gardner Lake Heights: Feels that as long as the septic is verified for year-round use, the property should be year-round.

Attorney Heller stated that the septic is a Public Health Code issue and is erroneous to this application.

M/S/F (Mullin/Diamond) to close the public hearing on application:

#09-1 S. Yaworski, 9 Harris Road Extension, Salem CT 06420

for the

Appeal from the decision of the Zoning Enforcement Officer in regard to the determination of seasonal use for property at 11 Gardner Lake Heights.

Assessor's Map #22; Lot #37

11 Gardner Lake Heights

Discussion dealt with the fact that keeping the hearing open would mean that the Board could receive more information.

If the hearing is closed, they could not do so.

Board discussions:

Discussing and acting on the appeal first. If the appeal is not granted, the Board will then move on to take action on the variance request of application #09-1.

L. Cole-Chu: The applicant presented evidence of continued year-round use of the property from 1962 until the death of F. Civitello, Sr., which precipitated the change of address on the 2007 Real Estate tax bill. Statutorily, his death did not terminate the legal non-conforming use of the year-round status. The ZEO's basis for her decision was the address change for the tax bill. This does not show intent for abandonment of the year-round property use.

S. Koslowski: Agrees with L. Cole-Chu.

S. Diamond: Requested L. Cole-Chu to restate his opinion and agreed with him.

K. Bellandese: There has been no abandonment of the year-round use. There are many reasons why a bill could be sent to another address. The owners have had the house for sale as a year-round home.

M. Mullin: Feels that three (3) documents, as per Section 5A.4 will satisfy the requirement of proof for year-round status. The applicant has submitted tax bills from 1992 to 2005. They only needed to show twelve (12) months of continuous use as year-round for that status. They have that documentation to satisfy Section 5A.4. They also have submitted telephone bills, electric bills, and a Voter Registration Card.

The chairman proposed the following motion:

The Salem Zoning Board of Appeals finds, based on the evidence presented, as a matter of fact, that the Zoning Enforcement Officer's determination that the subject property at 11 Gardner Lake Heights is a seasonal dwelling and is not entitled to a determination of use as year-round is erroneous and the Appeal of application #09-1 is granted.

Before the motion was made and seconded, discussion brought about the following revised motion:

M/S/C (Diamond/Bellandese) that the Salem Zoning Board of Appeals finds, based on the evidence presented, as a matter of fact, that the Zoning Enforcement Officer's determination that the subject property at 11 Gardner Lake Heights is a seasonal dwelling and is not entitled to a determination of use as year-round is erroneous and the Appeal of application #09-1 is granted.

Among other considerations, the Board finds that the death of a resident of a year-round dwelling does not terminate a non-conforming year-round use.

Vote: approved unanimously.

Due to the fact that the Appeal from the decision of the Zoning Enforcement Officer was granted, there was no action required on application:

#09-1 S. Yaworski, 9 Harris Road Extension, Salem CT 06420

for the

Request for a variance of Section 5A.2.1 (Lot Size) for property at 11 Gardner Lake Heights.

Assessor's Map #22; Lot #37

11 Gardner Lake Heights

2) **#09-2**

Attorney H. Heller, Authorized Agent for:

J. Civitello, 5 Ruta Drive, Northford CT 06472

E. Pucillo, 215 Bear Hill Road, Bethany CT 06524

Appeal from the decision of the Zoning Enforcement Officer that the determination that the dwelling constructed on the subject real property at 9 Gardner Lake Heights is a seasonal dwelling.

Assessor's Map #22; Lot #38

9 Gardner Lake Heights

Legal Notice read.

Due to the lateness of the hour, the Board took the following action, with the agreement of the applicants:

M/S/C Kozlowski/Diamond) to continue the public hearing for application #09-2 to the Salem Zoning Board of Appeals meeting scheduled for June 4, 2009, immediately following the first public hearing scheduled for that evening (application #09-3) at the Salem Town Office Building, 270 Hartford Road beginning at 7:30 pm. Vote: approved unanimously.

RECEIPT OF APPLICATION(S) TO SET PUBLIC HEARING DATE(S):

1) **#09-4**

E. & R. Laufer, 605 Old Colchester Road, Salem CT 06420

Appeal from the decision of the Zoning Enforcement Officer and request for a variance of Section 3.14.3 (REAR LOTS - setbacks) from fifty (50) feet required to thirty-nine (39) feet requested for construction of an attached garage at 605 Old Colchester Road.

Assessor's Map #14; Lot #14-B2

605 Old Colchester Road

M/S/C (Bellandese/Diamond) to set a public hearing for application #09-4 of E. & R. Laufer for Thursday, June 25, 2009 at the Salem Town Office Building, 270 Hartford Road beginning at 7:00 pm. Vote: approved unanimously.

APPROVAL OF MINUTES OF PREVIOUS MEETING(S):

1) **April 23, 2008 - Regular Meeting**

M/S/C (Mullin/Kozlowski) to approve the minutes of the April 23, 2008 Salem Zoning Board of Appeals Regular Meeting amended as follows:

Page 1, under *Present*, delete *Mullin, M.*

Vote: approved unanimously.

OLD BUSINESS:

1) **Such other Old Business as may be proper**

To place the following on the June 25, 2009 Zoning Board of Appeals agenda:

- Election of Officers
- Discussion of public hearing, setting protocol, and an Appeal application form

NEW BUSINESS:

1) **Such other New Business as may be proper**

There was no other *NEW BUSINESS* this evening.

CORRESPONDENCE/ANNOUNCEMENTS:

There was no *CORRESPONDENCE/ANNOUNCEMENTS* this evening.

ADJOURNMENT:

M/S/C (Mullin/Diamond) to adjourn the meeting at 10:50 pm. Vote: approved unanimously.

D. McTigue, Administrative Assistant/Recording Secretary

L. Cole-Chu, chairman