

**TOWN OF SALEM
PLANNING & ZONING COMMISSION
REGULAR MEETING MINUTES
TUESDAY, NOVEMBER 22, 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
John Gadbois, Vice Chairman
Diba Khan-Bureau
Carl S. Fontneau
Jennifer Lindo
Walter Volberg

ABSENT

Thomas Reith
Gary Closius, Alternate
Dave Knopf, Alternate
Steven Shelley, Alternate

ALSO PRESENT

Town Planner Nicole Haggerty

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

3. PUBLIC COMMENT: *none*

4. PUBLIC HEARING:

- a. **ZRA 22-01 – Frank Zeleznicky, Sean Smith, and Laura Smith. Application to amend Section 4.1.4 of the Salem Zoning Regulations to include lumbering on lots of 10 acres or more as a permitted use in the Rural A Zone.**

M/S/C: Khan-Bureau/Volberg, to open the Public Hearing for Application ZRA 22-01-Frank Zeleznicky, Sean Smith, and Laura Smith. Application to amend Section 4.1.4 of the Salem Zoning Regulations to include lumbering on lots of 10 acres or more as a permitted use in the Rural A Zone. Discussion: None. Voice vote, 6-0, all in favor.

Applicant Laura Smith, who spoke on behalf of the Applicants, recited Section 4.1.4, Rural Zone A, General, of the Regulations which does not include lumbering. Upon researching the history of the Regulation, she found that lumbering was originally a permissible activity within the Rural A Zone. In January 1990, the Regulation was

amended and lumbering became a permissible activity as a Special Exception (Section 6.2.1) for lots with a minimum of 80,000 square feet or 1.8 acres. She noted that lumbering and lumber yards are permissible activities in the General (Section 7.1.4), Highway Commercial (Section 8.2.4), and Industrial (Section 9.1.4) Zones.

The Regulations do not clearly define the term “lumbering” or “lumber yards” and the standard definition of these terms does not adequately describe the operation. The business, which produces a substantial forest product for residences and businesses, aligns with the State’s definition of “forestry” – a key tenet of the Town of Salem. In addition, CT DEEP (Connecticut Department of Energy and Environmental Protection) refers to firewood as a forest product and encourages its use, citing its lower carbon footprint in comparison with other resources. Their business provides firewood to numerous Salem residents and supports the National Firewood Taskforce’s recommendation to provide locally sourced wood to campgrounds, reducing the risk of pests. Other farms and tree services are also known to sell firewood in the zone. In researching the regulations of the surrounding towns, she found that the sale of lumber is an allowable activity.

The Zeleznicky Farm, which is comprised of 27 acres, has been in business for 78 years and is protected by Connecticut’s Right to Farm Law, which exempts agricultural and farming operations from nuisance laws, including the noise emitted from farming equipment. The trucks that are generally used to transport the wood are standard passenger trucks. Based on the information they have gathered, they did not believe that they were out of compliance and feel the need to voice themselves on behalf of the local farms and tree services that provide this valuable resource to its residents, especially with the rising price of gas and oil. She also noted that the Lions Club also sells firewood that derives from RUA Zone. It is their belief that lumbering for firewood is an ongoing practice throughout the Town and the State. She requested that the Commissioners consider their application and support them, similar businesses, and the community as a whole.

Public Comment:

Andrew Clark, 175 Pautepaug Hill Road, Baltic, Owner of Limb-It-Less Logging, LLC, spoke in support of the Application. He has managed forestland throughout Eastern Connecticut, including Zeleznicky Farm, for approximately 30 years. The business, he felt, is a win-win for everyone. The Farm not only provides an important heating source for Salem and its surrounding communities, but also supports local businesses, like his, that practice proper sustainable forest management. The type of wood the Applicants process and sell as firewood would otherwise end up in landfills. He felt the Application was reasonable and provides an adequate buffer zone from its neighboring properties. He added that the definition of lumber, per *Webster’s*

Dictionary, encompasses a wide range of activities. As such, he recommended the Commission consider a more clearly defined definition. He suggested they take great care when devising the final wording for the definition of lumbering and firewood operations in their Regulations and take into consideration the wide variety of operations lumbering includes.

Ms. Adams clarified that wood that is of higher value is sold to Mr. Clark and lower-grade wood is sold to the public for use as firewood. The wood is not harvested on the Farm, but is cut, split, and sold to the public.

Commissioner Lindo clarified that the Application is for a non-site-specific text amendment in the Town's Regulations. As such, the Commission's task is to make a decision based on what would benefit the overall zone. She felt that significant information was missing in the proposed text amendment, including a proposed definition of the term. She stated that a significant part of the Town is zoned RUA, with several properties measuring 10 acres or more. As such, the practice of lumbering could become a significant activity in the Town, increasing the importance of establishing clearly defined guidelines.

Commissioner Fontneau commended the Applicants for requesting a Zoning Amendment rather than fighting with the Zoning Enforcement Officer (ZEO), which is a more creative option and would have a much more positive result for everyone involved. He informed the Applicants that the application for the lumbering operation would require a Site Plan Review. As such, the Regulation Amendment should include verbiage related to the amount and type of equipment, area of operation, amount of product, and intensity of work to ensure that the operation does not become an industrial activity on a residential property.

ZEO Allen's letter and former Town Planner Justin LaFountain's memorandum were read into the record. Letters from the Southeastern Connecticut Council of Governments (SCCOG), which found that the proposed amendment is not likely to have a negative inter-municipal impact, and the Lower River Valley Council of Governments (RiverCOG), which found that a lumbering use may create unacceptable inter-municipal impacts to neighboring properties and suggested approving the use as a Special Exception, rather than by right, were also submitted.

Carol Carlson, West Road, questioned why Zeleznicky Farms was singled out, noting Ms. Smith's statement that there were other similar operations throughout the town that have not been cited with a violation.

Chairman Smith stated that the operation was discovered by the Zoning Enforcement Officer (ZEO) during the course of investigating a complaint.

An Anonymous Member of the Public questioned whether it would start a precedent for other wood-selling operations.

Town Planner Haggerty stated that, should a proposed Regulation Amendment pass, it would apply to all of the properties within the zone. According to the current Regulations, lumbering is not an allowable practice within the zone. There may be numerous properties that the ZEO may not find in compliance with the regulations.

Susan Mattesini, West Road, questioned how lumbering is currently handled, what the Special Exception is, and whether this would set a precedent for those who practice lumbering and are not aware of the Application.

Chairman Smith stated that one of the options is to amend the Regulations and accept lumbering as a Special Exception rather than an as-of-right activity.

Woodfellas' Owner Sean Smith stated that, should the Application be denied, many would lose their livelihood and heavily impact the Town and its residents.

Campground and Tree Service Owner Tim Keefe, Alexander Road, who purchase wood for their Campground from the Smiths, spoke in support of the Application. Should the Application be denied, they would be forced to purchase wood from a non-local company. As a result, the wood would need to be trucked in, increasing its cost and traffic on their local roads. The cost would be further exacerbated by the sale of the harvested wood outside the local area to be processed.

In response to Commissioner Khan-Bureau, it was clarified that they receive harvested wood from the towns of Colchester, East Haddam, and Salem. The wood is then cut, split, sold to the public, and delivered in pick-up trucks.

Rebecca Scott, West Road, questioned the complaint that was received, adding that the Zeleznickys are very respectful individuals.

Commissioner Lindo stated that no matter the content of a complaint, the ZEO is statutorily required to investigate all complaints. Should a violation be discovered during the course of an investigation, he/she is required to act on the findings.

Stephen Len, 319 Witch Meadow Road, noted that the Smiths utilize standard mason dump trucks to transport the wood as opposed to the large dump trucks, gas trucks, and low bed trucks that frequently travel along the local roads on any given day.

Commissioner Lindo reiterated that, though a violation notice was issued to the Applicants, the application to amend the Regulation(s) is not site-specific and would affect all of the residents residing within the RUA Zone. In addition, while there might be trucks that travel on West Road, there are many roads within the town that cannot

handle, even, standard mason dump trucks. There is also a potential that large logging trucks would be traveling on the roads for the same purpose.

William Martin, 104 Music Vale Road, recalled selling the wood that was cleared from his property to accommodate the construction of his home to his friends. The wood was then cut, split, and used for firewood. He agreed with the need for a clearer definition of the term. He considers the term "lumbering" to mean the cutting of a tree that is highly valued and used for such items as furniture and is not the same as firewood. Several years ago, lumber yards and sawmills were made allowable in Salem by Special Exception. He questioned the difference between the delivery, cutting, splitting, and use of the firewood for personal purposes vs. for profit. He noted that many residents cut trees on their property for firewood and many sell the wood to their friends and neighbors, which is considered an as-of-right use.

Scott Wayne, 680 West Road, who has shared a property line with the Zeleznickys for approximately 33 years, felt that the lines between forestry and firewood have been blurred. Based on his observations, he felt that the Applicants are sincere and fair and are operating a quiet, respectful, and clean operation that provides an honest living for young men and women of the community. He reminded the Commission that, like many rural towns, such activities as fishing, shooting, and cutting wood are acceptable activities that occur regularly. He recalled that when he moved into town in 1989, trucks were traveling in and out of a neighboring property that operated a tree farm. He expressed his willingness to help the Zeleznickys, adding that their employees have not been able to work since the violation was issued, resulting in financial hardship.

In response to Chairman Smith, Ms. Smith verified that the operation does not harvest wood and only processes firewood.

Commissioner Fontneau suggested the possibility of using the term "firewood" rather than "lumbering" to better explain the practice. He also questioned the type(s) of vehicles and equipment used and the maximum number of cords that are processed on the premises to provide the Commission with an idea of the operation's level of intensity.

Campground and Tree Service Owner Tim Keefe agreed that it is necessary to clearly define the terms and recognized that layers of parameters could be placed on the definitions. The amendment, he also agreed, should not be approved as proposed as it opens the door too widely. He recommended they contact Connecticut Farm Bureau Executive Director Joan Nichols and CTDEEP (Connecticut Department of Energy and Environmental Protection) Division of Forestry State Forester Christopher Martin for assistance in defining the terms. He reminded them that the firewood season is very short and this particular operation is of a small scale.

As stated in former Town Planner LaFountain's memorandum,

The Commission could approve the application with certain modifications, such as requiring that the use be set a certain distance from property lines, or require additional buffering between properties. Alternatively, the Commission could approve the use as a Special Exception, instead of as an as-of-right use. The Commission may also want to discuss the origin of the wood that is being processed on the site (i.e., is the wood coming from trees on the property, or being brought in from other properties).

Similarly, RiverCOG's letter, dated October 26, states that:

Impacts that should be addressed include the days and hours that the operation will occur. How much cutting and splitting is proposed? How much truck traffic, either bringing the lumber to the property and carried away for sale will there be? Are the Rural Zone A roads adequate for what may be significant truck traffic in this residential zone.

Bill Martin interjected, stating that the Commissioners have begun discussing the amendment, which should not occur until after the Public Hearing.

Chairman Smith agreed, stating that they have not yet closed the Public Hearing and they are still free to comment on the Application.

Mr. Martin continued to recommend that the Commission not approve the use as a Special Exception, which would require the item to be noticed in the local paper and a Public Hearing. The issue, he felt, should be much simpler.

Ms. Smith compared the hours of a proposed golf course of 7:00 a.m. to 9:00 p.m. (Section 4.2.18) with that of their operation which runs from 8:00 a.m. to 3:30 p.m., noting that their hours were set so as not to conflict with the school bus schedule or interfere with any traffic or noise issues. In response to Commissioner Fontneau who reiterated his question regarding the amount of wood that is processed and the type of equipment that is used on the property, she stated that standard log cutting and splitting equipment such as skid steers, log splitters, processors, chain saws, and other such equipment is used to process the wood. It is difficult to estimate the amount of wood that is produced due to the constant influx and outflux.

Chairman Smith recalled a similar issue regarding a quarry that appeared to be abusing the system, upsetting the neighboring properties, and the need to have recourse available in such instances. Commissioner Fontneau stated that the activity could be approved as an as-of-right with a site plan review which would not require a Public Hearing. Limitations could be placed on the approval to ensure that the operation does not grow beyond its given parameters. Should the operation grow beyond its limitations, a second regulation to allow the activity by Special Exception could be

added. Commissioner Lindo suggested the Commissioners continue the Public Hearing and provide the Applicants with the opportunity to work with Town Planner Haggerty to revise their proposed amendment based on their discussions.

A member of the public suggested the possibility of limiting the operation by size.

Frank Zeleznicky, the Owner of the property in question, provided the Application's background information. He stated that the issue before the Commission came about due to a noise complaint that was received from one of the neighboring properties, noting that the log splitter is located approximately 700 feet away from the neighboring property. Mr. Smith approached him several years ago in search of a location to cut wood. He suggested considering the approval of a wood-splitting operation. He commended the Smiths who are working hard to make a living.

A member of the public who resides on West Road stated that, while she does hear other people's chainsaws running, she has never heard the Applicants'. She felt that their operation was essential, is neither noisy nor unsightly, and their trucks do not speed in comparison to other vehicles that drive on the Town's roads.

Ms. Smith also noted that the Town does not have a Noise Ordinance.

Chairman Smith agreed that it was an important part of the local economy for those who not only produce the firewood, but also use the firewood to heat their homes.

M/S: Lindo/Volberg, to continue the Public Hearing for ZRA 22-01 – Frank Zeleznicky, Sean Smith, and Laura Smith to Tuesday, January 10, 2023. Application to amend Section 4.1.4 of the Salem Zoning Regulations to include lumbering on lots of 10 acres or more as a permitted use in the Rural A Zone. Discussion: Discussion ensued regarding the date of the Public Hearing. Because the Public Hearing for the Plan of Conservation and Development (POCD) is scheduled for their December meeting, which is expected to be extensive, it was felt that it would be best to continue the Public Hearing until January 10. In response to Chairman Smith who inquired about the possibility of allowing the activity to continue during this period, Town Planner Haggerty strongly recommended against it. She suggested the Property Owner speak with the ZEO regarding the possibility of (temporarily) ceasing the enforcement action to allow them to continue processing the wood in the interim. She noted that the text amendment is a separate issue from the enforcement action. She also informed the Commission that they are required, by State Statute, to decide on an Application within 65 days from the date the Application was received, unless the Applicant submits a written request for an extension. The process of a Cease & Desist Order

was briefly discussed. Kate Tomasek questioned whether the Applicant is actually out of compliance, per this evening's discussions. It was clarified that the decision to issue a Cease & Desist Order was made by the ZEO's interpretation of the Regulations. As such, it would be under his jurisdiction to reverse the enforcement action. The Commissioners agreed to schedule a Special Meeting for the Public Hearing.

M/S/C: Lindo/Khan-Bureau, to amend the motion to continue the Public Hearing for ZRA 22-01 – Frank Zeleznicky, Sean Smith, and Laura Smith to Wednesday, December 7, 2023. Application to amend Section 4.1.4 of the Salem Zoning Regulations to include lumbering on lots of 10 acres or more as a permitted use in the Rural A Zone. Discussion: None. Voice vote, 6-0, all in favor.

- b. ZRA 22-02 – Town of Salem Planning and Zoning Commission.** Application requesting to amend various sections of the Salem Zoning Regulations to be in compliance with current state statute. This includes the removal of Section 3.15: Required Floor Area, and the amending of the following sections: 3.20: Mixed Uses; 3.21: Accessory Apartments; 7.1.26: apartments in the business zone; 7.1A.9: drive-up window establishments; 11.4.5: Special Exception Findings; 11A: Site Plans; 15: Multi-Family Dwellings; 21: Mobile Homes; and 26.7: Parking in Age Restricted Developments.

M/S/C: Lindo/Volberg, to open the Public Hearing for Application ZRA 22-02 – Town of Salem Planning and Zoning Commission. Application requesting to amend various sections of the Salem Zoning Regulations to be in compliance with current state statute. This includes the removal of Section 3.15: Required Floor Area, and the amending of the following sections: 3.20: Mixed Uses; 3.21: Accessory Apartments; 7.1.26: apartments in the business zone; 7.1A.9: drive-up window establishments; 11.4.5: Special Exception Findings; 11A: Site Plans; 15: Multi-Family Dwellings; 21: Mobile Homes; and 26.7: Parking in Age Restricted Developments. Discussion: None. Voice vote, 6-0, all in favor.

Chairman Smith reviewed the proposed amendments to the Regulations which are being proposed to comply with the current State Statutes. Commissioner Lindo recited the first paragraph of the then-Town Planner Justin LaFountain's memorandum, dated November 14, 2022, which states:

The Planning and Zoning Commission is reviewing text amendments to the Zoning Regulations to be in compliance with Public Act 21-29. The following is a summary of the changes, and attached is the full text.

Town Planner Haggerty noted that all of the towns in the region have or are making similar amendments to their Regulations.

Commissioner Fontneau noted that the language, which is not included in the Town's current 2012 POCD, it is included in the proposed 2022 POCD.

William Martin, 104 Music Vale Road, stated that he found the Public Notice for the Public Hearing confusing and did not fully explain the requirements or the changes. Commissioner Lindo informed Mr. Martin that the proposed text amendments were posted on the website for the public.

M/S/C: Khan-Bureau/Volberg, to close the Public Hearing for ZRA 22-02-Town of Salem Planning and Zoning Commission. Application requesting to amend various sections of the Salem Zoning Regulations to be in compliance with current state statute. Discussion: None. Voice vote, 6-0, all in favor.

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

a. Regular Meeting Minutes of October 11, 2022

M/S/C: Khan-Bureau/Volberg, to approve the October 11, 2022 Planning & Zoning Commission Regular Meeting Minutes. Discussion: None. Voice vote, 6-0, all in favor.

6. OLD BUSINESS – none

7. NEW BUSINESS:

a. ZRA 22-01 – Frank Zeleznicky, Sean Smith, and Laura Smith. Application to amend Section 4.1.4 of the Salem Zoning Regulations to include lumbering on lots of 10 acres or more as a permitted use in the Rural A Zone. *Receipt of application and public hearing scheduling.*

Continued to Wednesday, December 7, 2022.

b. ZRA 22-02 – Town of Salem Planning and Zoning Commission. Application requesting to amend various sections of the Salem Zoning Regulations to be in compliance with current state statute. This includes the removal of Section 3.15: Required Floor Area, and the amending of the following sections: 3.20: Mixed Uses; 3.21: Accessory Apartments; 7.1.26: apartments in the business zone; 7.1A.9: drive-up window establishments; 11.4.5: Special Exception Findings; 11A: Site Plans; 15: Multi-Family Dwellings; 21: Mobile Homes; and 26.7: Parking in Age Restricted Developments.

M/S/C: Khan-Bureau/Gadbois, to approve ZRA 22-02 – Town of Salem Planning and Zoning Commission. Application requesting to amend various

sections of the Salem Zoning Regulations to be in compliance with current state statute, effective January 1, 2023. This includes the removal of Section 3.15: Required Floor Area, and the amending of the following sections: 3.20: Mixed Uses; 3.21: Accessory Apartments; 7.1.26: apartments in the business zone; 7.1A.9: drive-up window establishments; 11.4.5: Special Exception Findings; 11A: Site Plans; 15: Multi-Family Dwellings; 21: Mobile Homes; and 26.7: Parking in Age Restricted Developments. Discussion: None. Voice vote, 6-0, all in favor.

- c. **SE 22-03-Getty Granite, 120 East Haddam Road.** Application for a special exception and associated site plan to expand existing stone processing areas at 120 East Haddam Road. Site plan modifications also include expanding outdoor retail and storage areas, and the construction of a 1,000 square foot sales showroom building. *Receipt of application and scheduling of public hearing.*

Town Planner Haggerty reported that the Engineer has requested that the Public Hearing for the Application be held on December 13, 2022. Due to the scheduling requirements, the Commissioners agreed to hold the Public Hearing on January 10, 2024.

M/S/C: Khan-Bureau/Volberg, to schedule a Public Hearing for Tuesday, January 10, 2023, 7:00 p.m., at Salem Town Hall, Conference Room 1. Discussion: The minimum buildable area for new units will be added. Town Planner Haggerty stated that she has not yet had the opportunity to review the submission. Voice vote, 6-0, all in favor.

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

In response to Commissioner Fontneau who inquired about the status of 45 Forest Drive, LLC, Town Planner Haggerty stated that there was no update. Any updates would be provided during an Executive Session due to the pending litigation.

There is also no update regarding the dirt bike racetrack on Old Colchester Road, whose activity appears to have quieted. A Subdivision Application was submitted for the property and will be presented to the Inland Wetlands & Conservation prior to coming before the Commission.

9. TOWN PLANNER REPORT – none

11. CORRESPONDENCE – none

12. PUBLIC COMMENT – none

13. PLUS DELTAS

Chairman Smith expressed his appreciation to the Commission for their discussions and thanked them for their willingness to schedule a Special Meeting to help expedite the Application.

14. ADJOURNMENT

M/S/C: Lindo/Volberg, to adjourn the meeting 8:49 p.m. Discussion: None. Voice vote, 7-0, all in favor.

Respectfully Submitted by:

Agnes T. Miyuki, Recording Secretary for the Town of Salem

**A VIDEO RECORD OF THE MEETING CAN BE FOUND ON THE TOWN'S
WEBSITE UNDER BOARDS & COMMISSIONS – PLANNING & ZONING
COMMISSION – MEETING VIDEOS**