

Effingham Zoning Board of Adjustment Meeting and Hearing Minutes April 4, 2012

Present: Jim Pittman, Tim White, Fran Marchand, Jory Augenti, Mike Cahalane
Minutes prepared by Barbara Thompson

The meeting was called to order at 7:02 pm

Minutes: Fran moved and Jory seconded to accept the minutes from the March 7th meeting as presented. The motion passed. Fran moved and Jim seconded to accept the minutes from March 21st with corrections. The motion passed. *The date was corrected from March 28 to March 21.*

Old Business

- Rules of Procedure appendixes: Fran asked if anyone had received the appendixes from Henry yet. No one has. Jim will contact Henry for an update.
- Town website: Henry was going to check with the Selectmen re: lag times for posting. Jim suggested the website be checked to see if there are any guidelines posted.

New Business: None

Correspondence: None

Jim called the public hearing for the Elie Wakim variance to order at 7:15 pm.

Public Hearing Case #069 **Elie Wakim** **Tax Map 413, Lot 145** **Zone: R/A**

Present: Donald Smith, Esq, (agent for Elie Wakim), Elie Wakim, his mother and sister, Amy Allen, Mary Sowerby (tenant), Michael Caillouette (abutter)

Jory informed the Board he has done work with Mr. Smith but does not feel this would interfere with the case. Jim asked the audience if there were any objections; there were none. Board members did not have an issue. Jory remained on the Board for the hearing.

Jim reviewed the procedure for those present.

Presentation

Mr. Smith gave a brief history of the property. Significant dates cited are 2004 building permit to build a garage with playroom attached to the house; the previous owners of the property built the apartment prior to 2009, 2009 foreclosure on the property; Mr. Wakim's purchase of the property in 2009 with renters being in the detached garage at least since then.

Criteria

- "Granting the variance will not be contrary to public interest." The property is being used in a manner allowed for the zone. "The use of either a single family dwelling or a two family

dwelling is a permitted use within this zone. The present use is beneficial to the public interest as it provides affordable housing for families that wish to live and work in the area.”

2. “The current use of the property is not contrary to the spirit of the ordinance.” The zoning ordinance specifically permits the property to be used in a manner that would support two families. Though the current configuration of the buildings is not in strict compliance with the Zoning Ordinance, the spirit of the ordinance has not been violated as only two families can potentially reside on the property as permitted.
3. “Granting the variance would do substantial justice.” The applicant could lose the use of the property and a loss to them would not do justice to the applicant or the general public as it would remove one housing unit from the market.
4. “The values of surrounding properties are not diminished.” Citing precedent, “a variant use which is consistent with neighboring uses will not likely diminish the value of those other properties.” “In this particular instance one could argue that the presence of a second dwelling unit does not even qualify as a variant use, as two families are permitted to reside on a single lot of record in this particular zone.”
5. Unnecessary hardship. It is difficult to show any injury to the public or private rights of others. There is no impact as any lot on the street is allowed to have two families. The property is unique because the apartment already exists and is currently rented. The applicants are entitled to a reasonable return on investment. Mr. Wakim purchased the property as an investment so that the apartment rent would cover the taxes on the property. Mr. Smith again stressed that two families are allowed to dwell on the same lot and the ultimate issue is that the garage is not attached to the house.

Deliberation

Fran pointed out that the building permit submitted with the application is for a breezeway and garage to be added to the house and does not cover the detached garage.

Jory said if the garage was built before October 1999, any restrictions would not come under the current zoning ordinance. It would be grandfathered. However the subdivision regulations have been in effect since 1972 and that specifies there can only be one dwelling per lot.

Looking at the property card, the Board found the garage was built in 1986.

Fran stated the property has two mail boxes and that only the Town can authorize this and then they get the numbers from the post office. When did this happen? Amy volunteered that she is the second tenant and has been there 8 years, since 2004. He further questioned if the septic system is adequate for the 2 bedroom apartment as well as the 4 bedroom house. The septic approval is for 1987, but does it include the apartment?

All agreed more information is needed to come to a conclusion on the case.

1. When was the garage built?
2. When was it occupied by tenants and has the renting of the apartment been continuous?
3. Is the septic system acceptable?

Jim suggested they find any documentation regarding the original deed.

It was decided to continue the hearing to allow Mr. Smith and the Wakims to research for answers to these questions. Mr. Smith asked for 60 days which the Board agreed was reasonable.

Jim reminded the Board members not to discuss the case between themselves or any of those involved with the property.

100 Jory asked Mr. Wakim for permission for the Board members to do individual site visits to see the layout of the property. He said it would be all right as long as they notified the tenants if they wanted to enter the building.

At 8:00 the hearing was continued until June 6th no later than 7:15 pm.

105 Fran moved and Jory seconded to adjourn the meeting. The motion carried and the meeting adjourned at 8:01 pm.

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*These minutes are considered draft until they are approved at a regular meeting of the Zoning Board.
Any corrections will be noted in the next month's meeting minutes.*

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