

Effingham Zoning Board of Adjustment Meeting Minutes June 6, 2012

Present: Jim Pittman, Tim White, Jory Augenti, Mike Cahalane

5 Absent: Fran Marchand

Minutes prepared by Barbara Thompson

The meeting was called to order at 7:06 pm

10 Minutes: Jory moved and Mike seconded to accept the minutes from the April 4th meeting as presented. The motion passed.

Correspondence: LRPC invitation to the annual meeting June 25th. No one is able to attend.

15 Old Business: Jory presented his draft of a letter to the Board of Selectmen re: the feasibility of Rebecca attending hearings on variances generated from her office. Jim asked everyone to review the draft and offer any changes at the July meeting.

20 Other business: Since next month's meeting falls on July 4th, the date was changed to the following week, July 11th.

7:15P

Continuation of Public Hearing Case #069

Elie Wakim

25 **Tax Map 413, Lot 145**

Zone: R/A

Present: Donald Smith, Esq (agent for Elie Wakim), Elie Wakim and his mother and sister, Rebecca Boyden, Susan Gagne (former owner of map 413, lot 145)

30 Jim explained to those present that the Wakim's have the option to continue the hearing as a full board is not present which could affect the outcome of the hearing. The Wakims were willing to proceed with the hearing.

35 There was a brief review and discussion of the facts submitted at the last session and the information the board is seeking for this session. Susan Gagne, the former owner, explained that the garage was built in 1984 and the apartment was finished in 1986 or 1987. Her children used the apartment. She said the Town taxed the building as a dwelling starting in 1988, that there was separate electric and separate mail box. She was told she could not subdivide her lot, and if she sold, would have to sell
40 everything as one lot. She further explained that the apartment was occupied until the time that she left. It was a matter of a few months before Mr. Wakim bought the property.

Issues

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1. The application for variance was initiated based on the denial of a building permit for another building on the property and not the garage with the apartment.
 2. Jory explained that even though the apartment was built before zoning, the subdivision regulations have been in effect since 1972. The regulations only allow for one dwelling per lot,

so the property is still in violation. Even though the State mandated that a town may not use subdivision regulations as zoning in the 1990's, this situation predates that. Jim questioned whether the subdivision regulations are under the jurisdiction of the ZBA.

3. Jory brought up the fact that according to statutes, once a nonconforming property is sold, it can't be grandfathered. Once it changes hands, it must be brought into conformity.
4. Rebecca explained she only enforces the zoning ordinance, not the subdivision regulations. Based on the zoning ordinance, she would have considered the apartment grandfathered since it was in existence prior to 1999 zoning by the Town. Questions regarding grandfathering and abandonment arose and were discussed concerning the time between the Gagne's departure and the Mr. Wakim's purchase. Ms. Gagne explained that all facilities to support the apartment were left in place so the use of the building did not change and was not empty for more than a few months, and therefore, was not abandoned.

Rebecca reiterated that according to the zoning ordinance, the apartment was in existence prior to zoning and therefore, no variance is necessary. She felt that the applicant should be allowed to withdraw his application for variance since it is not really required. She suggested a notarized written document from Mr. Wakim's attorney and Ms. Gagne that the apartment was in existence prior to zoning would clear up the situation. Re: grandfathering, it was her opinion that grandfathering passes on with the property and that it continues until the use stops. Jory would like to do more research on grandfathering. Mike commented that in his opinion it appeared, according to the property card, the garage/apartment was taxed as a dwelling. He also brought up the fact that no abutters attended the hearing or expressed in writing that they had any problems with things as they stand.

Jim suggested the hearing be continued to allow Mr. Wakim and counsel to consider this and weigh the elements of the case. If they decide to follow the suggestion of the Code Enforcement Officer, this can be done by certified mail. He suggested Mr. Wakim might want the ZBA to officially recognize the grandfathering status which would give them a paper trail for the future. Mr. Smith said he and his client would discuss these issues and asked that the continuation be planned for August, should it be necessary, due to scheduling. The hearing was continued until August 1st no later than 7:15P.

New Business: None

Other Business: None

Jory moved and Tim seconded to adjourn the meeting. The motion carried and the meeting adjourned at 8:37 pm.

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.