

TOWN OF STONINGTON
Zoning Board of Appeals Stonington
Regular Meeting
October 12, 2010

Final

Chairman David Rathbun called the meeting to order at 7:02 P.M. In attendance were Matthew Berger, John Prue, Lynn Conway, Neil Canavan and David Rezendes. Zoning Enforcement Officer, Joe Larkin and Attorney Jeffrey Londegran were also present. Frederick Deichmann and Jack Guyol were not present.

Public Hearings:

a. **ZBA #10-12 Peter Watrous Carpentry LLC (Amended)**– Seeking a variance from ZR 5.1.1 bulk requirements to reduce side yard setback from 75' to 25'; to reduce lot frontage from 300' to 207.47'; to reduce minimum lot area from 120,000 s.f. to 50,000 s.f. and from ZR 3.1.4.2 to reduce the non-infringement area from 100' to 35' for construction of a single family residence. Property located at Clarence Ave., Pawcatuck. Assessor's Map 10 Block 3 Lot 1. Zone RC-120.

Joe Larkin reviewed the application which was continued from the September meeting. Attorney Theodore Ladwig spoke on behalf of the applicant. He submitted an amended supplement brief. He reviewed his new research of the property. He asserted that the variance granted in 1985 reducing the size from 50,000 to 30,000 S.F. of an *adjacent* lot and allowing building on that lot which created the hardship, making it a government imposed hardship. He argued that by this action the ZBA created a permanently unbuildable lot by this decision. Chairman Rathbun asked if there were any subsequent variances or actions taken on that property. Recent case law decisions were discussed. Ms. Conway thought that the owners had purchased the property with the knowledge that the lot was unbuildable and were taking a chance in attempting to get a variance. Mr. Watrous, owner of the property, spoke about his other properties in the area. He stated that he didn't do a title search of the property.

Public Comment in Favor: Mr. Dan Gowan,

General Comments: Mrs. Marion Leonard and Ms. Anne Miller

b. **ZBA#10-15 John & Jane Couto (continued)** - Seeking a variance from ZR 3.2.2.9 accessory use to provide reasonable accommodation under the Americans with Disabilities Act (ADA) by reducing the lot requirement for servant or guest accommodations from 240,000 s.f. to 48,000 s.f. Property located at 145 Whitehall Ave., Mystic. Assessor's Map 165 Block 1 Lot 22A. Zone RA-40.

Mr. Larkin reviewed the application. A waiver of the A-2 survey was granted by the Planning & Zoning Commission. The property was approved as a subdivision. This particular property had a garage built first which became a dwelling unit until the primary dwelling was completed. The applicant is now seeking a variance to allow the garage to be converted back into a dwelling under the Americans with Disabilities Act. Nick Kepple, attorney for the applicant was present. Attorney Cole-Chu spoke for the applicant and the need for a separate dwelling. He stated that the applicant proposed that the variance, if granted, would terminate if the property was sold. Mr. Prue claimed that the Commission could not change state law that says the variance goes

with the property. Mr. Berger reviewed a letter from the applicant that indicated that they moved to the property with intent of this expanded use despite the zoning restrictions. Mrs. Coutu spoke and claimed that she was told by the builder, Tony Sylvestre, that she could have two Certificate of Occupancies and that this use is permitted. She said that they had been misled by Mr. Sylvestre. Attorney Cole-Chu reiterated that the hardship was not economic.

Public Comment in Opposition: Nancy d'Estang, Alan Drouin

Rebuttal: Ms. Conway asked about the number of units in the main house which showed two kitchens. Mrs. Couto and her daughter stated there is a second kitchen and an apartment unit for the daughter in the main residence. They thought it was allowed.

The public hearing was continued to November 9, 2010.

c. ZBA #10-16 George & Brenda Sylvestre – Seeking a variance from ZR 5.1.1 bulk requirements to reduce the rear yard setback from 50' to 32' to enclose an existing patio. Property located at 216 Lantern Hill Rd., Mystic. Assessor's Map 169 Block 2 Lot 4. Zone RR-80.

Joe Larkin reviewed the application. The request for a waiver of the A-2 survey had been granted by the Planning & Zoning Commission. Mr. Larkin stated the lot is unique in this neighborhood because it is triangular in shape with 430 feet of road frontage.

Chairman Rathbun closed the Hearing.

Deliberations & Decisions:

ZBA #10-16 George & Brenda Sylvestre - Mr. Rezendes made the motion to approve the variance. Mr. Canavan seconded. The motion was unanimously approved. Roll Call: Mr. Rezendes-approve; Mr. Canavan-approve, Mr. Rathbun-approve; Mrs. Conway-approve; Mr. Prue-approve.

ZBA #10-12 Peter Watrous Carpentry LLC (Amended) – Mr. Prue made a motion to deny the request for the variance. Ms. Conway seconded the motion. The motion was unanimously denied.

Roll Call: Mr. Rezendes-deny; Mr. Canavan-deny; Mr. Rathbun-deny; Ms. Conway; deny; Mr. Prue-deny.

Approval of meeting minutes for August 10, 2010 and September 14, 2010, Mr. Rezendes made the motion to approve both set of minutes. Mr. Canavan seconded. The minutes were unanimously approved.

Mr. Prue made the motion to go into executive session. Mr. Canavan seconded. The motion to go into executive session was unanimous. The Board entered Executive Session at 10:10 p.m. The Executive Session concluded at 10:24 p.m.

Mr. Prue made the motion to approve the stipulated judgment and settle both M-R Atlantic Properties v. ZBA and Ritacco v. ZBA for the following reasons:

- 1) It results in the subject properties being brought more into conformance with the Town of Stonington Zoning Regulations.
- 2) It is consistent with case law regarding the implementation of General Statute 8-13a.
- 3) It places certain conditions and measures against the properties in favor of the Town of Stonington to ensure future compliance with the Zoning Regulations as to the subject properties.
- 4) It results in ending further litigation costs and expenses to the Town of Stonington.

Ms. Conway seconded the motion and it was unanimously approved. Roll Call: Mr. Rezendes-approve; Mr. Canavan-approve; Mr. Rathbun-approve; Ms. Conway-approve; Mr. Prue-approve.

Mr. Londregan announced that a hearing will be held on Thursday, October 14, 2010 at New London Superior Court.

Adjournment: Mr. Canavan made the motion to approve. Mr. Rezendes seconded. The motion to adjourn was unanimous. The meeting was adjourned at 10:30 P.M.



Neil Canavan, Secretary