

**TOWN OF STONINGTON**

Zoning Board of Appeals

Special Meeting

January 4, 2011

**Final**

Chairman Rathbun called the meeting to order at 6:12 P.M. In attendance were David Rezendes, Lynn Conway, Matthew Berger and Neil Canavan, all of whom were seated. Present were Zoning Enforcement Officer Joseph Larkin, and legal counsel for the Town from Waller, Smith and Palmer, Attorneys Ed O'Connell and Matt Kinell. Frederick Deichmann and Jack Guyol were absent.

**Deliberations & Decisions – Old Business:**

**ZBA#10-15 John & Jane Couto** - 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.

The public hearing on this application was closed on November 9, 2010. To comply with CGS 8-7d, the Board must render a decision on or before January 13, 2011. Attorney Ed O'Connell, legal counsel for the Town, was not able to attend the December 14, 2010 meeting requiring this Special Meeting to be held in order to conclude the procedure.

*For the purpose of discussion, Mr. Canavan made a motion to approve the application. Mr. Rezendes seconded. The motion was unanimously approved.*

Mr. Canavan noted that the variance was not requested in order to provide respite care but rather in support of activities of daily living, activities not dependent on residence, and that the subject's disability isn't increased or decreased in terms of having a separate residence.

Mr. Rezendes felt the request went beyond providing for reasonable accommodation under the ADA, and the opportunity to provide for such should be available in the 5,000 sq. ft. primary residence.

Mr. Berger agreed with Mr. Rezendes, further noting that submitted plans clearly showed the intent to have two dwelling units, regardless of the applicants' claim that they were unaware it was not permitted, adding that all documentation supporting the disability was acquired for the variance request, not during the initial planning timeframe. He stated the hardship was of a personal nature and granting a variance would be contrary to the POCD recommendations for that area. Mr. Berger noted that attempting to correct the applicants' error made in purchasing the property was not justification for a variance.

Ms. Conway felt the applicants had not made sufficient effort to show that reasonable accommodations could not be made in the 5,000 sq. ft. primary residence, agreeing with Mr. Berger that the sequence of events supported the intention to have two dwelling units and that ignorance of the regulations against such wasn't cause for a variance.

*Mr. Canavan made a motion to withdraw his motion to approve the application. Mr. Rezendes seconded. The motion was unanimously approved.*

*Mr. Canavan made a motion to deny the application. Ms. Conway seconded. The motion to deny was unanimously approved.*

**RESOLUTION DENYING VARIANCE**

WHEREAS, the Stonington Board of Appeals (ZBA) is a public entity, functioning as an instrumentality of the Town of Stonington, having the authority to vary the application of zoning regulations according to Connecticut General Statutes § 8-6(3); and

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WHEREAS, Section ZR 3.2.2.9 of the Stonington Zoning Regulations requires the lot size for lots containing servant or guest accommodations to be at least 240,000 square feet; and

WHEREAS, John and Jane Couto seek a variance from ZR 3.2.2.9 to provide reasonable accommodation for their daughter, Melissa Couto, under the Americans with Disabilities Act (ADA) allowing her to reside above their detached garage on their property, by reducing the lot size requirement for lots containing servant or guest accommodations from 240,000 square feet to 48,000 square feet.

**THE ZBA FINDS:**

As a general rule, hardships related solely to a personal situation and not to the subject property itself are not sufficient to support the granting of a variance.

A zoning authority may make "reasonable" accommodations to "rules, policies, practices or services when such accommodation [s] may be necessary to afford [a handicapped or disabled person] equal opportunity to use and enjoy a dwelling," such accommodations are not necessary here.

WHEREFORE, the variance is denied.

**New Submissions:**

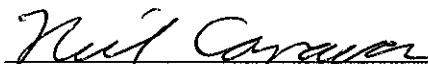
**ZBA #10-19 Carlos & Marsha Pacheco** – Seeking a variance from ZR 5.1.1 bulk requirements to reduce the front yard setback from 30' to 25' and the rear yard setback from 40' to 38' for an addition and a deck. Property located at 5 Oriole St, Pawcatuck. Assessor's Map 36 Block 7 Lot 10. Zone RA-20.

*Mr. Berger made a motion to schedule the new application and any others received by January 7, 2011, for public hearing on February 8, 2011. Mr. Rezendes seconded. The motion was unanimously approved.*

**Adjournment:**

*Mr. Rezendes made a motion to adjourn. Ms. Conway seconded. The motion to adjourn the meeting was unanimously approved.*

The meeting was adjourned at 6:35 P.M.

  
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Neil Canavan, Secretary