

**Zoning Board of Appeals
Regular Meeting
FINAL Minutes
March 12, 2013**

Chairman David Rathbun called the meeting to order at 7:25 p.m. Members in attendance were David Rathbun, Jack Guyol, David Rezendes, Lynn Conway and Matthew Berger. Zoning Official Joseph Larkin was also present. Virginia McCormack and Frederick Deichmann were absent.

Chairman Rathbun read the procedures for obtaining a variance and definition of hardship. Lynn Conway read the call for the public hearing.

Public Hearings:

ZBA #13-02 Arthur & Karen Erikson - Seeking a variance from ZR 5.1.1 bulk requirements to reduce the side yard setback from 75' to 35' for expansion of an existing deck. Property located 230 Palmer Neck Rd., Pawcatuck. Assessor's Map 56 Block 1 Lot 3. Zone RC-120.

Mr. Larkin stated the applicant requested a waiver of an A-2 survey, which was granted by the Planning and Zoning Commission on Feb. 5, 2012. Originally the overlying zone for this property was RA-40, but a few years later it was rezoned to RC-120 which requires a side yard setback of 75 feet. The status of the existing structure has changed from conforming to non-conforming. Strict adherence to "Non-conformities can be maintained, but not expanded" which in this case means that even adding a few feet of open deck to the back of the existing house would require a variance.

Property owner Arthur Erikson stated he wants to add to the existing deck and plans to stay within the existing footprint of the home.

There was no one speaking in favor, in opposition or with general comments. The public hearing was closed.

Mr. Berger moved to deny the application as he did not see a hardship. Ms. Conway seconded the motion. After a discussion, the application was denied 3-2 due to lack of hardship.

ZBA #13-03 & CAM Review - Summit Street Development LLC - Seeking a variance from ZR Section 5.2.1. minimum lot area of 80,000 s.f. to 46,762 s.f. for a pre-existing, non-conforming lot. Property located at Mason Island Rd. & Harry Austin Dr., Mystic. Assessor's Map 160 Block 4 Lot 4. Zone M-1.

Mr. Larkin stated the applicant applied to the Planning & Zoning Commission for approval to construct a medical building on the existing 46,762 s.f. lot. The property is located in an M-1 zone which requires a minimum lot size of 80,000 s.f. The property is also located less than 1000 feet from Mystic Harbor and therefore requires a Coastal Area Management(CAM) review. Mr. Larkin stated the Planning & Zoning Commission denied the applicant's application. The Inland Wetlands Commission has approved the drainage design for the property which wouldn't increase the rate of flow off the site.

Attorney Theodore Harris, representing the applicant, submitted the following exhibits:

- Exhibit #1 - Application file with the A-2 survey
- Exhibit #2 - Planning & Zoning Commission Minutes (1/8/2013)
- Exhibits #3 & #4 - Chain of title for both properties
- Exhibit #5 - IWWC Draft minutes (8/2/2012) and approval letter of decision
- Exhibit #6 - Soil & Environmental Services report from Donald Fortunato.

Attorney Harris said the minimum the owners want is to develop the lot in accordance with the regulations like any other lot in an M-1 zone. They aren't asking for any other variances. If they aren't allowed to use the lot, in essence the lot has been confiscated without compensation.

Speaking in Opposition: Rosemary Buckley stated that the lot was rezoned from RC-120 to M-1 without any notification to the public.

Speaking in Opposition:

Amanda Lindberg presented a GIS map as exhibit #2. Then she read aloud the buffer requirement for the GBR-130 zone regarding the 100 ft. non-infringement area. She submitted the Town of Stonington ZBA Guide-Recognized Hardships as exhibit #4.

General Comments:

Rick Newton provided general comments on the preservation of wetlands and town regulations for protection of streams and watercourses. He submitted the statement from the Avalonia Land Conservancy as exhibit #5. He also submitted a Natural Diversity Data Base Areas map as exhibit #6.

Binti Ackley agreed with Mr. Newton's statements that we should preserve the wetlands. Mr. Ackley said the tiny strip of land in question is too small to put all that is proposed on it.

Rebuttal: Mr. Darrell stated his family belongs to the Sylvia's pond conservation and that was set up to preserve the land and keep the water clear. They have worked with many officials to keep the pond clean and would not do anything to harm nature or the environment.

After a brief discussion, the Board decided that the applicant should go before the Inland Wetlands Commission prior to seeking a variance since they have purview over the wetlands issues.

The public hearing was closed.

Mr. Deichmann asked if this commission could defer until hearing from the Inland Wetlands Commission. Mr. Larkin stated the applicant can apply to ZBA again in 6 months. At that time, it will be up to the Board if they will hear application again. Mr. Deichmann made a motion to deny the application without prejudice. Mr. Rezendes seconded the motion. The motion to deny without prejudice was unanimous.

Old Business: None

New Business:

ZBA #13-02 Arthur & Karen Erikson – Seeking a variance from ZR 5.1.1 bulk requirements to reduce the side yard setback from 75' to 35' for expansion of an existing deck. Property located at 230 Palmer Neck Rd., Pawcatuck. Assessor's Map 56 Block 1 Lot 3. Zone RC-120

Mr. Larkin reported there is an old survey on file for this application.

ZBA #13-03 & CAM Review - Summit Street Development LLC – Seeking a variance from ZR Section 5.2.1. minimum lot area of 80,00 s.f. to 46,762 s.f. for a pre-existing, non-conforming lot. Property located at Mason Island Rd. & Harry Austin Dr., Mystic. Assessor's Map 160 Block 4 Lot 4. Zone M-1.

AAP #13-04 OMMV LLC (Anthony Silvestri) - Request ZBA overturn the Zoning Enforcement Officer's Cease & Desist #11-136. Property located at 175 Whitehall Ave., Mystic. Assessor's Map 165 Block 1 Lot 22D. Zone RA-40.

The above applications are scheduled for public hearing on March 12, 2013.

Discussion of A-2 survey waiver requirements: Town Planner Keith Brynes was present to discuss this item with the Board. Mr. Rathbun stated that no minutes were required for this discussion.

Review of Meeting Minutes: Mr. Rezendes motioned to approve the minutes from January 8, 2013. Ms. McCormack seconded the motion and it was unanimously approved. Mr. Deichmann abstained.

Mr. Rathbun made motion to adjourn meeting. Mr. Rezendes seconded the motion and it was unanimously approved. The meeting adjourned at 8:25 p.m.


Lynn Conway, Secretary