

MINUTES
ZONING BOARD OF APPEALS
MAY 22, 2013 – 7:00 P.M.
TOWN HALL ANNEX – COMMUNITY ROOM 1

I. ROLL CALL

Present: Grady, Kravits, Manning, Mencer, Russotto, Stebbins
Staff: Davis, Gilot

Chairman Stebbins called the meeting to order at 7:00 p.m.

II. PUBLIC HEARING

1. ZBA#13-03 – 743 River Road, Mystic, Ante and Klaudija Ljubicic/Owners, Richard Dixon/Applicant, for a variance to the minimum lot size requirements of section 5.2 to allow lot one to contain 45,070 square feet and lot two to contain 46,920 square feet, as opposed to the minimum 80,000 square feet per lot required in the RU-80 zoning district. PIN 261907591293 and PIN 261907594201, RU-80 zone. (CAM) - Continued

The Chairman reviewed the public hearing procedures and explained that the Secretary discovered a discrepancy in the mailings during the initial public hearing on May 8, 2013, and the meeting was continued to tonight to allow the applicants time to make the proper notifications.

Secretary Manning reviewed the revised mailings and stated that they were in order.

Attorney Richard Dixon, 15 Holmes Street, Mystic, represented the owners, Ante and Klaudija Ljubicic.

Mr. Dixon distributed a memorandum to the Board members (Exhibit 5). He recapped his presentation of the application for two reconfigured lots. He explained that this variance, if granted, would not substantially affect the comprehensive zoning plan. Mr. Dixon explained that the hardship was that the zoning had changed from one acre to two acre lots, and the previous owner had the right to request a variance prior to the change, but did not. Case law states that the nonconformance was purchased by the applicant, and therefore the purchaser should not be barred from the right to reconfigure the lots. The previous owner could have, as of right, reconfigured the lots. All the neighboring properties are smaller sized lots and the two proposed lots would be the same size. The zone change created the hardship, and the small lot has no practical use. The Board discussed whether this would be considered a subdivision rather than realignment, and whether a larger nonconformance would be created with the lot across the street. Mr. Dixon said that the land only needs a variance because of the zone change. The hardship is that one of the parcels cannot be used for anything reasonable. An easement on the coast would also be granted to the Town. Some pictures were shown to the Board (Exhibit 6). Mr. Dixon said there would be no negative impact on the road if the variance was granted.

Mr. Dixon summarized the CAM report and reviewed the reconfiguration of the septic system. He stated there would be no greater impact on the Sound.

Staff said there is room for a larger house on the existing lot. Conceptually, an in-law (limited size) attached accessory that met health code requirements could be added to the existing house.

Attorney Dixon read a portion of the minutes of the Zoning Commission meeting from the hearing for the zone change. The reasons for the change to two-acre zoning were discussed, including ledges, topography, and pressure for a large tract (currently owned by the Town) to be subdivided into one acre lots. The Town acquired that forty acres after the zone change.

The following people spoke in favor of the application:

Susan Graham, 761 River Road
Conrad Thomas, 949 River Road
James Costello, 721 River Road
Edward Able, 901 River Road
Devina Sarges, 1063 River Road
Tom Ljubicic, Stonington

Mr. Manning read the following letters in favor of the application into the record:

Dorothy Cesan, Feeding Hills Mass, dated 4/23/13
John Abed, 415 River Road dated 5/3/13
Ruth Crocker, 759 River Road dated 5/2/13
Dorothy Cesan, 716 River Road, dated 7/11/12
Kate Shah, 767 River Road dated 9/12/11
Van Brown and Wanda Tillman, 925 River Road dated 5/3/13
Susan Graham, 761 River Road dated 5/13/13
Reinhard Sarges, 1063 River Road dated 5/14/13
John Gray, 1160 River Road dated 5/6/13
Thomas and Dawn Harris, 707 River Road dated 8/22/11

The Secretary also read the following correspondence into the record:

A letter from Kosta Tsaparikos, San Diego, California, dated 5/20/13, regarding the realtor's listing of the subject property.

The Planning Commission's negative referral report which recommended denial based on the same plan and policy conflicts stated in their report on the previous (withdrawn) application in 2011.

Staff stated that he did not believe that subdivision of the property was relevant to the variance request. By splitting and combining the two lots, it would be no more non-conforming than it is currently. Staff discussed the limitations of large lot zoning as a means of protecting resources. Regarding case law, staff said it could be reviewed by the Town Attorney if the Board requested such. Staff discussed the 75 ft. easement, recommended to encumber the large knoll which takes up 2/3 of the southerly portion of the lot. Staff requested health department review to make sure the well, septic, etc., could be accommodated on the newly created lot if approved. Staff said the applicants also have the option of applying to the Zoning Commission for a zone change if the variance request was denied.

Attorney Dixon said the 75 ft. easement was offered to preclude a house being built on top of the hill. The road is designated as a scenic road, and the easement would also preserve the stone wall along the back of the lot.

A GIS mark-up of the neighboring lots and sizes was entered into the record as Exhibit 7.

The public hearing was closed at 8:25 p.m.

III. MEETING FOLLOWING PUBLIC HEARING

1. Decision on Public Hearing Application

- a. ZBA#13-03 – 743 River Road, Mystic, Ante and Klaudija Ljubicic/Owners, Richard Dixon/Applicant

Some Board members did not feel that the hardship was proven, or that the right still belongs to the applicants. Some members felt that relative to the testimony, a hardship was not created by the applicant's own action. Some members felt the applicants should apply to the Zoning Commission for request a zone change to RU-40 for that area.

MOTION: To approve the variance as requested.

Motion made by Russotto, seconded by Kravits. MOTION DENIED 1 - 4, 4 against (Grady, Kravits, Russotto, Stebbins).

2. Correspondence - None

3. Minutes – Meeting of May 8, 2013

MOTION: To approve the minutes of May 8, 2013 as presented.

Motion made by Grady, seconded by Russotto. MOTION PASSED UNANIMOUSLY.

4. New Business

- a) New Applications

Staff said there are no new applications at this time.

5. Report of Staff – None

IV. ADJOURNMENT

The meeting adjourned at 8:55 p.m. made by Grady, seconded by Russotto, passed unanimously.

Tom Manning
Zoning Board of Appeals
Prepared by Debra Gilot, Office Assistant III