



## ***Land Use-Urban Redevelopment Committee – Board of Representatives***

Harry Day, Co-Chair

David Kooris, Co-Chair

# **Committee Report**

**Date:** Tuesday February 25, 2014

**Time:** 7:30 p.m.

**Place:** Republican Caucus Room, 4<sup>th</sup> Floor, Government Center

The Land Use-Urban Redevelopment Committee met as indicated above. In attendance were Co-Chair Day, Co-Chair Kooris and Committee Member Reps. Fountain, McGarry, Okun, Reeder, Ryan and Summerville. Absent or excused was Committee Member Rep. McNeil. Also present were Reps. Adams, Fedeli and Velishka; Norman Cole, Land Use Bureau; Bill Morris and Tom Mills, Zoning Board; Kathleen Murphy; Karen Murphy; and Rick Redniss and Raymond Mazzeo, Redniss & Mead, Inc.

Co-Chair Day called the meeting to order at 7:37 p.m.

<b>Item No.</b>	<b>Description</b>	<b>Committee Action</b>
<sup>1</sup> 1. <a href="#">LU29.014</a>	VERIFICATION; process for appealing an amendment to the zoning map from R-20 to RA-1 for Six Properties on Saddle Rock Road 2/11/14 – Referred by Zoning Board	<b>APPROVED 6-0-0</b>

Valerie Rosenson, the Legislative Aide to the Board of Representatives, read the attached [report](#) into the file, confirming that the petition objecting to the amendment to the zoning map was valid. A motion to accept the report was made, seconded and approved by unanimous vote. (Reps. Day, Kooris, Fountain, Okun, Reeder and Ryan in favor.)

2. <a href="#">LU29.015</a>	REJECTION; appeal of an amendment to the zoning map from R-20 to RA-1 for Six Properties on Saddle Rock Road 2/11/14 – Referred by Zoning Board
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Chair Day explained that this item will be considered as a rejection of the decision of the Zoning Board

<sup>2</sup>Mr. Cole gave a summary of the Zoning Board proceedings, explaining that:

- The application was represented as a partial solution to the problem of flooding

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<sup>1</sup> Video Time Stamp 00:06:00

<sup>2</sup> Video Time Stamp 00:11:35

- damage to properties in the flood plain
- There is a significant increase in interest in raising houses because of the increased cost of flood insurance;
  - There were originally 7 properties considered, but the Murphys objected over the course of the proceedings and their property was removed;
  - The key differences between the two zones is that R-20 is zoned for ½ acre, with a 30 ft. height limit, a 2 ½ story limit and a 50 ft. rear yard setback; RA-1 is zoned for 1 acre, with a 35 ft. height limit, a 3 story limit and a 60 ft. rear yard setback;
  - The applicant was interested in having everyone in area be able to raise their houses consistent with zoning and without a variance
  - The application was reviewed by the Planning Board which found it consistent with Master Plan Category 2 (there was an argument about whether or not it should be in Category 1, but it is not inconsistent to have RA-1 in Category 2).
  - <sup>3</sup>The zoning change was granted (as cited in the staff report) primarily because it is sound flood plain management practice and consistent with coastal management policy in the State of Connecticut to rezone properties in flood plains to the lowest practical density to reduce the risk to life and property;
  - The application was made by property owners requesting to be upzoned into a larger lot zone;
  - Historically, lot sizes along the water have been getting rezoned for bigger lots;
  - Recent storms resulted in significant flood losses; if there were more serious flood losses and the house were left in in R-20 zone, it could result in subdivision of these lots to three or four ½ acre lots, so the change to the RA-1 designation is beneficial over time;
  - Under R-20, an owner would not be able to put in even a partial 3<sup>rd</sup> floor if the house is elevated 15-17½ ft. and the house would have no basement;
  - Under RA-1, the benefit is still relatively small; the house could be elevated and a house could have a partial 3<sup>rd</sup> floor (the height is measured to the midpoint of a gabled roof).

<sup>4</sup>Mr. Cole spoke to some of the objections to this zoning change:

- The change does not create any possibility that it will increase flooding risk because it does not change the footprint or amount of coverage and increases the setback;
- Effect on other people's views may not be an issue because the setbacks are more restrictive and footprints could be smaller;
- Any construction is subject to site plan review, so an objection concerning views is premature and can be adequately addressed;
- It will not affect how individual owners decide to build;
- The fact that some lots will be non-conforming has nothing to do with use and will not change anyone's right to develop;
- Variance would not be the appropriate tool to address this problem because nobody has a unique hardship in the area, so an amendment to the zoning map (or a legislative change to the zoning regulations) is the appropriate tool;

<sup>5</sup>In response to questions from Committee members, Mr. Cole stated:

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<sup>3</sup> Video Time Stamp 00:16:20

<sup>4</sup> Video Time Stamp 00:24:20

- The application was limited to these properties because the applicants did not want to include property owners who did not want to participate and wanted a group of contiguous lots, this does not make it spot zoning or inconsistent with the Master Plan;
- Some communities have created zoning regulations which apply to flood plain properties and address elevation regardless of zone; he is not sure how such a uniform change would be received;
- The longer view with recurring floods is that there could be enough damage to have someone subdivide;
- This change has a mild benefit to people who elevate their house;
- The causes of the flooding are unrelated to lot size;
- The RA-1 zoning permits an additional 5' of height and requires a more restrictive setback; either zone permits a very large house; if the house is elevated it would result in a story house with an attic;
- Some properties would be technically non-conforming, but it would only affect the ability to subdivide, it would not impair any future ability to build, so there are no practical consequences of this from a building standpoint;
- He does not know if the Zoning Board of Appeals has rejected any applicants seeking to raise their houses for height; elevating buildings for flood control is unusual but becoming more common;
- This would not be a unique hardship because every other house in the area has the same hardship;
- Some communities are granting a legislative variance within the regulations to elevate houses within the flood plain; this would be a global solution, but might not be welcome in all communities or neighborhoods;
- This seemed like a simple solution because people were voluntarily seeking to upzone their properties;
- The Zoning Board has not prepared a separate memo of its findings;
- The Zoning Board of Appeals gives a "plan-specific" variance;
- Although RA-1 is intended primarily for rural areas, it has been applied to coastal areas for 20 to 25 years.

<sup>6</sup>Ms. Karen Murphy spoke about the basis for the petition, stating:

- This is spot zoning, and the proper solution is legislative;
- This was originally raised as a subdivision issue, and nothing was said about height or bulk issues;
- None of the other houses in the application are seeking to raise their houses;
- This application only benefits one party;
- There are no subdivision issues because some houses have covenants not to subdivide and the current owner of the access road is not giving the right to subdivide;
- This application was for a concealed purpose; density is not an issue;
- This zoning change could be a taking;
- The letter that accompanied the application was not sent to the other applicants;

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<sup>5</sup> Video Time Stamp 00:29:15

<sup>6</sup> Video Time Stamp 00:55:10

- The staff report was drafted on the basis that all of the applicants were in favor of the of the proposal
- There was no mention of the Master Plan by the Planning Board;
- This zoning change does not comply with the Master Plan;
- This is not an issue for this area.
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<sup>7</sup>Ms. Murphy then stated that there are several legal issues as to why the Board has no authority to consider this matter:

- The Board of Representatives has no jurisdiction to hear this issue;
- The applicant is Rick Redniss who is not a property owner in Stamford so it is not a valid application;
- The referral does not contain any written findings;
- The master plan was not properly amended – this is a Residential Area 2, which requires less than an acre;
- This does not require a de novo review;
- CAM needs to rule on changes in regulations and the Zoning Board did not wait for a ruling from CAM;
- The Zoning Board lacks the authority to grant variances and this is a variance;
- Ms. Murphy read into the record items 59-69 of her [January 6<sup>th</sup> letter](#) into the record regarding Constitutional violations;
- Her abutter property rights are being violated;
- The neighbors are concerned about process and no charter provisions were not complied with;
- She was denied the right to meet with the Planning Board;
- Corporation Counsel should be present;
- The Zoning Board did not consider the factors contained in Charter §C6-40-1;
- The Charter and Coastal Management Act were not complied with;

<sup>8</sup>In response to questions from the Committee, Ms. Murphy stated:

- One of the applicants lost acreage due to flooding (Rep. Kooris responded that this would not be a loss of property, just a loss of exclusive access rights);
- As of now there is a 99% chance that there will be subdivisions – a comprehensive plan for all of Stamford would address future owners;
- There is no pressing need to do this at this time;
- Mr. Redniss did not represent that he was representing the applicant and should have represented that he was representing all the owners
- The property owners would be able to build much larger houses, although the houses could also be able to be built larger under the previous zoning, but they could be 10' higher and block everyone's views
- She will lose abutter's rights by the zoning change because they have granted a variance without a hearing and she did not get a hearing in front of the Planning Board;
- She has a right not to have a house as high as hers next to her;
- They would not get a 3<sup>rd</sup> story if they went to the Zoning Board of Appeals

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<sup>7</sup> Video Time Stamp 01:09:08

<sup>8</sup> Video Time Stamp 01:32:40

- because the Zoning Board of Appeals would not find a hardship;
- She was not provided with the letter for the rezoning application so she was deprived of her due process rights;
- She is not claiming that was not deprived of the statutorily required notice of public hearing;
- This is a taking of property for the benefit of rich, connected people; zoning changes can reduce property interests without it being a taking;
- She might oppose a 3 story house before the ZBA

<sup>9</sup>Ms. Kathleen Murphy stated that:

- When they were first approached it was to create a flood plan for the area, but all that was done was a rezoning;
- They misrepresented the current footprint of the house as 6,000 ft<sup>2</sup>;
- At the Zoning Board, the density issue was not discussed;
- An attorney for a different owner was still evaluating the proposal at the first hearing; he was asked by Mr. Mills to provide something from them in writing, but none was provided;
- They don't know what the applicants are planning to build.

<sup>10</sup>Mr. Redniss stated that:

- The application specifically states that it will permit an additional 5 ft and a ½ story.
- On October 12<sup>th</sup>, Ms. Cullman sent an e-mail to all neighbors that he had filed an application for a zoning change and that they would be receiving a copy by mail, and that she had extra copies which she would provide if they wanted; Redniss & Mead failed to send the copy of the application;
- The Cullmans were asked if they wanted to buy the property by the Frank Rich estate after it was destroyed;
- Since this is a self-created hardship, it is unlikely the ZBA would grant a variance;
- A resident in an R-20 zone can by the Regulations build a 3 story house with a full basement. In a flood plain, the house would have no basement and be built above the flood plain. To get additional height the owner would have to go to the ZBA;
- He has a letter from Corporation Counsel that although his wife owns his house in Stamford, since he owns his office, he can file applications; he has filed hundreds of applications in his name on behalf of clients;
- Westport allows an additional height of 5 feet because losing 1 ½ stories;
- Jim Lunney consulted with the law department and confirmed that the rezoning will have no impact on improvements for existing lots, regardless of whether the properties are occupied or vacant;
- They held up the application so the lawyer of the owners of the boarded up house could have time to review the application. The lawyer did not come to the second hearing to object, although the lawyer knew the date of the hearing;
- Under R-20, any property over 40,000 ft<sup>2</sup> could be subdivided;
- The value of the property goes up with the zoning change;

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<sup>9</sup> Video Time Stamp 02:04:00

<sup>10</sup> Video Time Stamp 02:10:44

- The original square footage number was high because it included a portion of the eaves;
- A 3<sup>rd</sup> level allows more useable space and therefore a smaller footprint;
- Private people can apply for a zoning change, even if it is only 2 or 3 properties;
- Ms. Cullman asked only her waterfront neighbors if they wanted to be included in this application;
- One can still build on non-conforming lots, subject to meeting the zoning regulations; this is not abandoning the use of the property as a house
- It is fine to have 1 acre zoning in Master Plan Category 2. RA-1 is not only in rural areas. It also exists on Vine Road and along the coast;
- This is a solution for a vulnerable area – owners of one property have raised their house, but not high enough, and still suffered damage in Sandy;
- This is the furthest point out in the Sound in Stamford and the most exposed;
- A comprehensive regulation giving everyone on the coast an additional 5' might have unintended consequences, for example in Waterside or the Cove.

<sup>11</sup>In response to questions from the Committee, Mr. Redniss stated:

- Everyone was in support of this initially, but at the November 20th meeting, the Murphys stated they did not want to be included; people who objected did speak at the hearing.;
- The Planning Board considered this on referral of the Zoning Board and does not have an obligation to send out notices of the meeting; it was not a public hearing and nobody else was present;
- The Planning Board can take 3 actions on a referral – recommend approval, denial or modification, and determines consistency with the Master Plan;
- Properties beyond the area being rezoned don't necessarily need to be included – these are newer houses and don't necessarily need a change;
- The Jim Lunney letter states that individuals on nonconforming lots are losing the right to subdivide, a 10' setback in the rear and a 10' setback on the side yard for the access roads lot.

This meeting was adjourned until Wednesday March 11<sup>th</sup>, 2014, at which time there will be a public hearing.

Respectfully submitted,

Harry Day, Co-Chair

*This meeting is available on [video](#).*

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<sup>11</sup> Video Time Stamp 02:51:20