



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

Harry Day, Co-Chair

David Kooris, Co-Chair

# **Committee Report**

**Date:** Tuesday March 11, 2014

**Time:** 7:00 p.m.

**Place:** Democratic 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, McNeil, Okun, Reeder and Summerville. Absent or excused was Committee Member Rep. Ryan. Also present were Reps. Fedeli, Nabel and Zelinsky; Norman Cole, Land Use Bureau; Kathleen Murphy; Karen Murphy; Rick Redniss and Raymond Mazzeo, Redniss & Mead, Inc.; Tom Cassone, Esq. and several members of the public.

Co-Chair Day called the meeting to order at 7:05 p.m.

<b>Item No.</b>	<b>Description</b>	<b>Committee Action</b>
1. <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 2/25/14 – Held in Committee	<b>Failed 3-3-2</b>

Co-Chair Day described the procedure for this meeting, which would begin with a public hearing and then would proceed to discussion and deliberation by the Committee. Co-Chair Day then opened the public hearing.

<sup>1</sup>Mr. Steven Chrust of 107 Saddle Rock Road, spoke in favor of the Zoning Board's decision, stating that:

- He and his wife live in the rezoned area
- They and other residents of Saddle Rock Road had authorized Rick Redniss to ask the Zoning Board to rezone their properties to 1 acre on their behalf
- They want the restrictions and benefits of 1 acre zoning
- They are happy about the Zoning Board decision
- They want and need restrictions on development on the point, given the risk of flooding recognized by the revised regulations since Sandy
- They want to be able to raise the elevation of their home, as they have done it

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<sup>1</sup> Video Time Stamp 00:03:10

- once already and have to consider whether and when to raise it again
- They have seen the plan of the house to be built at 74 Saddle Rock Road and believe it will be a welcome addition to the neighborhood
- One signatory to the petition has removed their name
- There is no basis for opposition to this zoning change
- The Board of Representatives should rely on the expert opinion of the Planning Board and the Zoning Board that the one acre zone is appropriate

<sup>2</sup>Mr. Robert Rangelov of 75 Saddle Rock Road stated that:

- Their house was destroyed as a result of a flood in 2011
- Their lot is a ¼ acre which became a non-conforming lot when the zoning was changed to R-20
- They were forced to comply with the City flood elevation requirements because it was a frequent loss property and the repairs exceeded 50% of the value of the property
- They received a legal opinion from the City that in the event of a loss, they could raise their house within the existing footprint even though they did not meet setback requirements, and as a result they were able to raise their house
- Their neighbors expressed concerns about the overall height of the structure, as a result of which they built a 2 story flat-roof building
- After going back and forth, the neighbors approved of the proposed building, which the ZBA approved unanimously
- The ZBA process is the appropriate process for the rezoned properties
- Susan Cullman and John Kirby had meetings in their house with engineers to discuss coastal flooding and preventive measures.
- He heard about this application in the Thanksgiving meeting
- He objects to this rezoning because he was not contacted or asked to participate in the process and believes this is discriminatory because he is on an adjacent property
- Based on the wave action study in evidence, he would like someone other than the applicant to give an explanation how the compounding effect of waves can affect his property if another structure is built
- An individual doesn't necessarily have the right to speak in a CAM application hearing
- He doesn't begrudge anyone the right to subdivide
- This rezoning would not address his needs
- Changing the zone will not alleviate flooding problems for all affected parties
- He would like to see legislation for people who want to mitigate their situation
- The zoning change should apply everywhere, which people would object to
- The ends could be accomplished by different means
- This is not a solution for all

In response to questions from the Committee, Mr. Rangelov answered that

- His understanding of the purpose at the initial meeting was solely to prevent flooding

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<sup>2</sup> Video Time Stamp 00:06:07

- He is in favor of the zoning change if it will benefit him but he doesn't think it will
- He doesn't know if this will hurt him, but it is not helping him
- He doesn't know the effect of a new structure
- He might not be able to speak at a CAM hearing
- A preliminary study was done
- There was no discussion of zoning

<sup>3</sup>The committee discussed the procedure to be followed. A motion to permit the parties 15 minute closing statements was made, seconded and approved by a vote of 6-0-2 (Reps. Day, Kooris, Fountain, McGarry, Okun, Reeder and Ryan in favor; Reps. McNeil and Summerville abstaining.)

<sup>4</sup>Mr. Kirby stated that:

- He and his wife own a home at 88 Saddle Rock Road, which was flooded several times.
- The house is 8 inches below the current flood elevation requirements
- The Rich property became available as part of an estate sale
- The basement had been flooded numerous times
- After Storm Sandy, the purchasers of that property backed out and they offered the house to them
- They want to live in a safe home, as everyone on the point does
- They intended to demolish the house, which was not safe and planned with architects and coastal experts to build a safe house
- They and their neighborhoods spoke a great deal about the flooding
- They had been in contact with Rick Redniss and Roberge Associates about repairing their groins, and asked them to speak to the entire neighborhood to see if there was anything they could do as a community to prevent the flooding
- They commissioned them to do a study about flood mitigation for the neighborhood, agreeing to pick up the cost but asking neighbors to pitch in if possible
- The study took much longer than anticipated
- They bought the property and had an architect design at least 2 ft above Stamford's requirements, which means 17 ½ ft, and understood that they would also have to raise their current home
- Rick Redniss suggested 1 acre zoning in order to allow everyone to build appropriately above the flood level.
- Thought they were applying for a very simply upzoning that the experts had recommended in order to build at a safe, suitable level
- Their neighbors all agreed, including the Murphys originally
- They then had Mr. Redniss submit an application on behalf of those people who wanted to be included
- They wanted the benefits and the restrictions of upzoning
- They still need to go through the building permit process and the CAM review
- They have asked for a study of wave action to determine how the house they are building will affect the community (as well as their current residence)

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<sup>3</sup> Video Time Stamp 00:40:05

<sup>4</sup> Video Time Stamp 00:53:50

In response to questions from the Committee, Mr. Kirby stated that:

- The neighbors were aware that the upzoning would reduce density, increase height to 3 stories and increase the rear setback requirement
- They knew when they bought the property that there was a 15 foot elevation requirement
- They could build a very large house on the property, but believe it is safer to build a house at 17 ½ feet
- They considered getting a variance but Mr. Redniss pointed out that while the City would most likely create some sort of solution in a few years, by applying for the rezoning it would solve problems for the whole neighborhood now
- His current property is less than 1 acre
- He does not want to merge the properties because he would prefer to retain the option to sell one of the lots

<sup>5</sup>Mr. Redniss stated that

- Much of this discussion is about what this process is not
- There is nothing in this process or this rezoning that would change Mr. Rangelov's situation - they have a non-conforming ¼ acre lot in a ½ acre zone and can raise their house
- This is a very simple solution and was used in the Cove
- The problems here are due to misinformation
- The regulations for ground coverage for an R-20 house and an RA-1 house are the same for front-yard and side-yard setbacks. None of this would affect the flooding risk. Being an RA-1 doesn't change this
- Whether the house is a ranch or 3 stories doesn't affect flooding because the flooding all takes place in the first 17 feet. What's above that doesn't matter
- This application was about 5 feet of height
- The rear yard of all of these properties is water and they have to be set back from the water
- If you are 3 feet above the base flood elevation, you can save \$10,000s of flood insurance
- If not in a flood zone, an R-20 permits a basement, a first floor, a second floor and a half a third floor. In a flood zone, you lose 12-15 feet of basement. In RA-1 you get back 5 feet of that

<sup>6</sup>Ms. Karen Murphy distributed summaries of Exhibits [1](#), [2](#), [3](#), [4](#), [5](#), [6](#), [7](#), [8](#) and [9](#), copies of which are attached. Rep. Day stated that Exhibit 1 would not be included in the record because it is not relevant to this item. Ms. Murphy stated that

- At the Planning Board:
  - Ms. Cullman and Mr. Kirby did not want to go for a variance but instead were only interested in changing the zoning map for their two lots
  - Mr. Redniss stated there would only be one non-conforming lot (the Kirby lot), although there would be three

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<sup>5</sup> Video Time Stamp 01:13:43

<sup>6</sup> Video Time Stamp 01:21:06

- There was no discussion of the Master Plan
  - David Woods stated that “this is one of the most difficult staff reports to write” and Mr. Cole responded “Oh you’re nuts, just do it” (In response to a question from Mr. Kooris, Ms. Murphy stated that these are all quotes from the tape she would play.)
  - No flooding or height questions were asked
  - Excluding Mr. Tunick’s property gave the applicant the “opportunity” to exclude the smaller lot at 75 Saddle Rock Road, which the neighbors (other than the Murphys) limited to 24 foot height.
- <sup>7</sup>Ms. Murphy then played a tape of the Planning Board hearing on November 19, 2013 (Co-Chair Day stated that he did not hear anything irregular on the tape)
  - Exhibit 9 says that the City already has a flood plan and any house can be raised and that approving this application sets a very bad precedent by allowing 10 extra feet that would result in “McMansions” on the three undeveloped lots
  - Ann Richards had a short house, although it was 8000 ft<sup>2</sup>. As a result the waves would go over the house, fill the basement, and fill the pool. This will be a higher house. Exhibit 8 says that if the waves will hit a vertical, impermeable, rigid surface, the reflected wave energy will double the height of the wave based on the opinion of a coastal management engineer.
  - Exhibit 6 shows that the Board does not have jurisdiction to hear this because the Master Plan has to be amended first. This is a residential 2 area and RA-1 is inconsistent with Residential 2.
  - The Zoning application violates the requirements for the Zoning amendment
  - Exhibit 7 shows the matter is not properly before the Board of Representatives because the applicant is listed as Rick Redniss who does not own property.
  - Exhibit 5 shows there was misinformation to other neighbors. On January 6, Mr. Redniss caused Mr. Lunney to sign a letter saying if you are nonconforming you can do anything you want. She wrote a response to this on January 8<sup>th</sup> which was not included in the record
  - Exhibit 4 is caselaw showing that another property (107) is going to become nonconforming and will object to this. She believes it is unequivocally clear when the mean high tide line moves back you lose property. The case law is clear.
  - The Planning Board and Master Plan do not want nonconforming lots
  - Exhibit 3 is the minutes to the last meeting and are not correct; the exhibit lists the errors; the rezoning constitutes spot zoning
  - The city has a flood policy that anyone can raise their property, according to Jim Minor’s memo
  - This is legislation not zoning

<sup>8</sup>Ms. Kathleen Murphy stated that:

- Susan and John want to build a safe house, and she does not object to that
- They went to Mr. Redniss to get a variance, but Mr. Redniss said a map change would be a better solution
- They went to the Zoning Board and only sought a change for the 2 properties, numbers 88 and 74

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<sup>7</sup> Video Time Stamp 01:24:32

<sup>8</sup> Video Time Stamp 01:40:26

- The Planning Board told them they needed more than 2 properties and so they called their neighbors to get them to agree to 1 acre
- People didn't understand the bulk and the height issues
- Mr. Redniss said the genesis of this application was the development of 74; he discredited the ZBA by saying these people pay high taxes and bought the wealthiest property, why should they have to go hat in hand to beg for a variance
- The root cause of all this is a quirky ZBA; they are erratic; they add conditions which don't pertain to the application; the Board should be looking at this
- There is an opinion from Corporation Counsel that people can raise their houses (without any expansion or building) without a variance
- This house has a much bigger footprint and it is set back further from the property line, but they have terraces, cabana, changing room a 3 car garage
- Once they cover all this space, impervious ground will be lost, retaining walls be built
- They are concerned about flooding
- They have a problem with people who have influence in Stamford getting things done
- She thinks he had to "hold his nose" to write this report
- There is a perception that "something is going on here"
- We need to protect the rights of all residents
- Could make a legislative solution

<sup>9</sup>Norman Cole stated that:

- He is present on behalf of the Zoning Board, which is the defendant in this action
- The charge of the Board of Representatives is to determine if the Zoning Board made an error, or if it didn't have sufficient grounds for its decision, or if its decision was arbitrary
- The primary reason the zoning change was granted was 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"
- In 1984, when the Zoning Board was doing comprehensive rezoning in the area of Shippan, Mark Lubbers, then the Executive Director of the EPB, wrote a letter to Jon Smith, the Planning Zoning Director, see Cole Exhibit, a copy of which is [attached](#), in which he says "Southwestern side of Ocean Drive West, Saddle Rock Road area; existing zoning R-20; proposed zoning R-20. -- Because of the acute flood hazard along this stretch of shoreline, together with the unstable geology and measureable rise in sea level, long-term planning suggests a reduction in the potential development density of this area. We suggest consideration of RA-1 zoning for this area of the peninsula."
- There are other documents showing that the Shippan Point Association and the Shippan Property Owners Association have in the past invited the Zoning Board to consider RA-1 zoning.
- The second reason in his opinion the Zoning Board granted the zoning change was because the application was made by property owners requesting to be rezoned from R-20 to RA-1 into a larger lot zone
- The third reason was that continuing R-20 zoning could result in subdivision of

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<sup>9</sup> Video Time Stamp 01:47:47

these lots to three or four ½ acre lots, so the change to the RA-1 designation is beneficial over time

- RA-1 Zoning is consistent with the Category 2 Master Plan designation of this property
- This application is not about increasing flood heights on other properties, it does not affect how anyone builds on a property, it will not result in a change in potential blocking of views because the zoning does not affect where the house is placed or how tall it is constructed; and the zone change does not control development on a lot because each plan is subject to a separate coastal site plan review by the Zoning Board
- A zoning variance would be a difficult substitute process because it requires a unique hardship. there are 40 or 50 houses that are in the same situation, and the hardship is therefore not unique to this property
- Rezoning to RA-1 has zero effect on the ability to build on a lot less than an acre; the setback requirements are the same except the rear setback which is an additional 10 feet; the building coverage is the same and the building can be placed in the same spot

<sup>10</sup>Co-Chair Day closed the public hearing.

Co-Chair Day stated that

- The context of this is an appeal from the Zoning Board to the Board of Representatives; the Board of Representatives will be voting on whether or not to reject what the Zoning Board did; they don't have to agree with what the Zoning Board did, but rather determine if the Zoning Board made a mistake
- There are 3 possible avenues that could have been used to address the flooding problem: zoning, a variance request to the ZBA and a global legislative solution, which might be something to consider in the future
- The question is whether, in choosing the first option, the Zoning Board made a mistake
- He does not believe the appellants have crossed the hurdle of finding that the Zoning Board made a mistake
- While the Planning Board may not have specifically mentioned consistency with the Master Plan, it is implied in the process; that is why the matter was brought to the Planning Board
- It does not matter that this process may have started with only 1 or 2 lots, since it did not end up that way
- It does not matter that it only benefits one lot at this time, since it may benefit the others in the future
- It is appropriate to give some deference to the Planning Board and the Zoning Board
- In order to reject, we need to be able to cite definitive reasons to reject

In response to a request from Rep. Fountain, Mr. Cole stated that the role of the Board of Representatives is to determine if the Zoning Board made an error or didn't have valid grounds for its decision.

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<sup>10</sup> Video Time Stamp 01:53:27

Co-Chair Day stated that the Board's role is to determine whether to reject the Zoning Board's decision, not whether to approve it; nor is it the Board's role to determine if it would have made a different decision.

<sup>11</sup>Mr. Minor stated that

- His email which is being cited was a 2010 email in response to a specific question from Mr. Lunney; it is not an opinion. It was not reviewed by Corporation Counsel or signed by him; it was specific to the question of letting someone build a flood-damaged house higher keeping everything the same even though the house is non-conforming
- The email does not say you can ignore height requirements; raising the house and meeting the height requirements it is not an expansion of a non-conforming use
- If the Board of Representatives does not act on the referral from the Zoning Board, the decision of the Zoning Board stands
- Under the Charter, the Board of Representatives is to be guided by the same standards as the Zoning Board; there are Supreme Court cases on this.
- The Board of Representatives must review this as if it were a Zoning Board and give deference to the Zoning Board's decision, just as a court would
- Unless the Zoning Board made an error on zoning principles, the Board of Representatives should let the decision of the Zoning Board stand
- The Board of Representatives should only correct something which violates zoning principles

<sup>12</sup>In response to questions from Co-Chair Kooris, Mr. Cole explained that:

- Under the Master Plan, residential category 1 is the lowest density category and residential category 2 has smaller lot sizes; the point of the Master Plan is to constrain the Zoning Board not to rezone property in a way that conflicts with the Master Plan; you can't put in a lot size smaller than that permitted by the Master Plan but it is not inconsistent to have a larger lot
- The Zoning Board did not receive any previous application for fewer lots in connection with this zoning change; the original application for the rezoning was for 7 lots

<sup>13</sup>In response to a question from Co-Chair Kooris as to where Exhibit 8 specifically states that increase from 30 ft to 35 ft would result in the additional vertical wall that results in wave compounding, Ms. Murphy stated that:

- Exhibit 8 does not state that the increase to 35' would result in the wave compounding

<sup>14</sup>In response to a question from Rep. Summerville, concerning the allegation that Mr. Redniss could not file an application because he did not own property in Stamford, Mr.

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<sup>11</sup> Video Time Stamp 01:59:21

<sup>12</sup> Video Time Stamp 02:02:38

<sup>13</sup> Video Time Stamp 02:04:57

<sup>14</sup> Video Time Stamp 02:08:53



Cole stated that he has accepted many applications from Mr. Redniss, who does in fact own property in Stamford and who reviewed this with Corporation Counsel.

In response to questions from Rep. Reeder, Mr. Cole stated that

- In the original memo accompanying the appeal, he did not explain the reasons for the Zoning Board's decision;
- The referral memo summarizes the key reasons for the Zoning Board's decision
- The Zoning Board did rely on the letter from attorney Kari Olson of Murtha Cullina because it agreed with it and did not rely on the materials from attorney James Freeman of Cacace, Tusch & Santagata because the Zoning Board did not agree with this opinion
- Ultimately the staff report prepared by David Woods and Norman Cole is what the Zoning Board relied upon

Co-Chair Day explained that the Board office had asked the Zoning Board to hold off on submitting the referral in order to have enough time to consider this item. Otherwise, the Board would have had to have acted by the last Board meeting.

<sup>15</sup>In response to questions from Rep. Fountain, Mr. Cole stated that:

- The zoning regulations set outside limits on placement and height, but there is a great deal of freedom of choice within those limits as to placement or height; in a one acre lot, there is a great deal of choice; the zoning regulations don't control house design
- If there is a flooding issue, the Zoning Board would require the applicant's engineer to certify that the building would have no flood impact

Chair Kooris stated that a larger footprint (which would tend to be a result of more restrictive height limitations) might have a greater flood impact.

<sup>16</sup>Co-Chair Kooris stated that

- the decision to be made here is not whether the Zoning Board was the most appropriate mechanism
- the decision is based on the path taken
- this doesn't preclude a larger coastal strategy as well as site strategies, particularly because you want redundancy
- the question is whether the Zoning Board was appropriate in using the characteristics of one site to assess the conditions of an area and make a zoning change for that area based upon what they learned from that site,
- they looked at the area, and the reality of the flood regulations, and the fact that the parcels being closer to an acre than 20,000 sq. ft., so they would rather reduce the risk of subdividing, the loss of floor area by not being able to have habitable space below the flood elevation
- a rezoning is designed to remedy the loss of FAR allotted to them through zoning
- the development which has been discussed would be the same in R-20 and RA-

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<sup>15</sup> Video Time Stamp 02:14:43

<sup>16</sup> Video Time Stamp 02:18:56

- 1, so many of the arguments made are unrelated to this decision
- It seems that the Zoning Board understood that the zoning change would affect subdivision and height
- What was conveyed to the neighborhood is not relevant; what is relevant is what was conveyed to the Board and what landowners have spoken about here
- He has seen nothing to overturn

<sup>17</sup>Rep. Reeder stated that:

- She looked at attorney Freedman’s submission, which states that these changes have to be consistent with a comprehensive plan, rather than just a few properties
- This plan was not comprehensive flood management
- This information should be used for a comprehensive flood management plan
- David Woods’ report asked whether this change would enhance properties’ ability to meet the zoning code; by making properties non-conforming it would make them outside of the provisions of the existing zoning code, which disturbs her
  - Co-Chair Kooris responded that in an existing, developed community, any rezone would result in some non-conforming lots, and here the only non-conforming factor is lot size
- This is a reaction to an application rather than a comprehensive plan and doesn’t address the flood management concerns of other homes or neighborhoods which a more comprehensive plan would address
  - Co-Chair Kooris responded that zoning is opportunistic – while there are master plans, and there were recommendations to upzone this area decades ago which was politically not possible – this was a chance to capture an opportunity
  - Co-Chair Day noted that the Planning Board held this was consistent with the Master Plan

Rep. Okun stated that

- this change does not address flooding problem
- they could have gone before the ZBA
- The city needs a plan for all homes in danger of flooding and the Board should reject the zoning change and send it back to the Planning and Zoning Boards for a comprehensive plan
  - Co-Chair Day stated that the Board could send a letter to the Zoning Board requesting a comprehensive plan
  - Flood danger is not a “hardship” as required by the ZBA because it is not a unique characteristic of this property, so the owners would not be able to get approval from the ZBA

<sup>18</sup>Rep. Fountain stated that

- He has tried to focus on the primary issue of whether the Zoning Board erred in

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<sup>17</sup> Video Time Stamp 02:24:03

<sup>18</sup> Video Time Stamp 02:35:30

- its decision or failed to have a valid basis for its decision
- The issue of a comprehensive plan was not before the Zoning Board, therefore they did not err in their decision by not creating a comprehensive plan because it was not their decision to make
  - They ruled on a particular zoning question, and needed to answer the questions before them. If they had ruled against it in order to create a comprehensive plan, they would have been subject to appeal for not addressing what was before them
  - The ZBA was the appropriate channel for 75 Saddle Rock Road because that was a ¼ acre property and a unique situation, but is not appropriate for this
  - The Zoning Board rightly considered the issues before them – it is not inconsistent with the Master Plan; it reduces density; it gives people the right to go higher and get out of the flood zone
  - Once 71 said no, they could not include other properties
  - Usually people are in favor of this type of zoning
  - He can find no mistake the Zoning Board made

Rep. Reeder stated that the staff report statements did not support the conclusion.

Rep. Fedeli stated that if this were to be before the ZBA, each individual homeowner would have to go before the ZBA and that would address one homeowner at a time.

Co-Chair Day noted that there are other lots in disrepair and if they do not lift their houses, they will not be able to get affordable insurance.

Co-Chair Kooris stated that if FEMA raises the flood level to 17' without the height increase the houses would be very flat. Zoning is based on what is right for multiple properties. There are at least two vacant properties that require rehabilitation and will probably also be built higher. There is a separate Coastal Area Management review for any specific building on these lots.

A motion to reject the decision of the Zoning Board was made, seconded and defeated by a vote of 3-3-2 (Reps. McGarry, Okun and Reeder in favor; Reps. Day, Fountain and Kooris opposed and Reps. McNeil and Summerville abstaining.)

This meeting was adjourned at 9:55 p.m.

Respectfully submitted,

Co-Chair Harry Day

This meeting is on [video](#).