

TOWN OF TIVERTON
ZONING BOARD OF REVIEW MINUTES
February 1, 2017

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, February 1, 2017 at 7:00 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey, Mr. George Alzaibak and Mr. Peter Mello.

Also present were: Neil Hall, Zoning Official, Peter Skwirz, Town Solicitor, and Ms. Sally Ferreira, Court Reporter.

1. *The petition had been filed by Edward F Adamowski of Tiverton, RI requesting a variance to Article VIII, Section 3.d.(1) of the Tiverton Zoning Ordinance in order to construct an addition to the existing residence within 200 feet of Stafford Pond and renovations of same at 979 Old Stafford Road, Tiverton, RI being Plat 213 Lot 130 on Tiverton Tax Assessor's maps whereby development within 200 feet of Stafford Pond and its direct tributaries requires a use variance when located in a R60 zoning district, has been amended to remove the existing residence and to build an entirely new residence beyond 200 feet off Stafford Pond.*

DECISION:

Attorney Bruce Cox began presenting the petitioner's case by stating in doing some investigation on the existing structure and site, Mr. Adamowski found that they would need far more work than originally anticipated and as such it was decided there is adequate space on the site to rebuild or build on the site outside of the 200 foot setback requiring a special use permit as it's required in a water shed district.

At this time, Attorney Cox introduced Mr. Gary Lamond the engineer who prepared the Environmental Review Statement. Mr. Gary Lamond was sworn in by the court stenographer. Mr. Lamond stated he is a civil engineer who was hired by Mr. Adamowski to design a septic system for the project as well as prepare an Environmental Review Statement. Mr. Lamond went on to say the Environmental Review Statement that he prepared for the prior application for the proposed addition onto the structure was within the 100 foot setback would be applicable here. Mr. Lamond further stated the Environmental Review Statement went to the Planning Board for review and it was reviewed by Steere Engineering who found it acceptable and the Planning Board made recommendations. The Chairwoman acknowledged that the Environmental Review Statement has been made part of the record.

Mr. Lamond proceeded by saying that the Environmental Review Statement was more restrictive than what Mr. Adamowski is proposing currently so by following that previous Environmental Review Statement, it should be acceptable under the new proposal. The Chairwoman asked Mr. Lamond to explain the new design and suggested it would be helpful to hear some testimony about how the earlier approval relates to what is being proposed now.

Mr. Lamond went on to testify that he was hired to design a new septic system for the addition as the house was going from a two bedroom dwelling which is what is existing to a three bedroom dwelling. Mr. Lamond also stated the entire existing dwelling was within 200 feet. All the improvements would be outside of the setback. At this time, Mr. Lamond brought the Board's attention to the new plan which shows everything outside of 200 feet. Mr. Lamond pointed out that the septic system can remain basically in the same location and shift the storm water mitigation system to accommodate the relocated house further away from the set back. Mr. Lamond further stated all the improvements would be outside of the setback away from Stafford Pond making it less restrictive. The new proposal is much less restrictive than the old proposal.

The Chairwoman asked if the existing garage is staying and Mr. Lamond responded yes, it's staying. Ms. Taylor Humphrey asked what will happen to the existing dwelling and Mr. Lamond responded it will be removed. Mr. Alzaibak asked why the Board did not receive an actual architectural design for the house and Attorney Cox responded the petitioner is proposing the use that's allowed in this area on this size lot and not the design of the house.

Mr. Hall assured the Board that he requires a Class 1 survey which is going to have on it the setbacks and an actual site plan with the actual dimensions of the foundation being proposed. The Chairwoman stated that is helpful to know.

The Chairwoman asked Attorney Cox to address the criteria for special use permits. Attorney Cox responded granting this use variance would not detrimental to the public health, and safety, morale or welfare. It will be more beneficial because the petitioner will be moving the existing structure outside of the 200 foot setback. It will be compatible with the usage in the neighborhood. Attorney Cox went on to state this is a residential area and a residential house will be built to fit within the neighborhood. Granting the use variance will not create a nuisance in the neighborhood nor hinder and endanger pedestrians. There will have adequate provision for water service and fire protection. Attorney Cox further stated there is an approved on site waste water treatment from DEM that will function for this structure as it would for the other and it will be compatible with the Comprehensive Plan which will minimize impact on the pond and is in compliance with the neighborhood.

The Chairwoman asked if the Board had any further questions for the petitioner's attorney or the engineer. There were no further questions from the Board. The Chairwoman asked if anyone in the audience had any questions. There were no questions from anyone in the audience. At this time, the Board went into Executive Session and began deliberations.

Mr. Jackson stated he had no problem in granting the use permit as it takes the risks out of it by moving it behind that 200 foot requirement. Mr. Collins stated the town wants a 3 acre lot but this lot already exists and there is a house on it. The petitioner is creating another house somewhere else that meets all of the requirements and he has no problem with granting the use permit. Ms. Taylor Humphrey agreed with Mr. Jackson and Mr. Collins. Ms. Taylor Humphrey

went on to say Mr. Adamowski addressed the Board's issues and concerns as was requested and respectfully addressed them all and brought back the documentation the Board was looking for and for those reasons she is in support of granting the use permit. Mr. Alzaibak agreed with Mr. Jackson, Mr. Collins and Ms. Taylor Humphrey.

Mr. Collins made a motion to grant the request for a special use permit on this property on the grounds that the petitioner meets and demonstrated all of the requirements for a special use permit, and that the petitioner could never ever comply with the requirement and use the property because of the fact that the property already exists. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey and Mr. George Alzaibak.

2. Request for reconsideration of Zoning Board's June 1, 2016, denial of a petition filed by Bruce H Cox, Attorney for Valley Farm LLC c/o Robert Glanville of Bristol, RI requesting a special use permit to Article XIV § 7.b. of the Tiverton Zoning Ordinance in order to continue the use of horse stabling, two dwelling units on common lot, operation of landscaping services on site and off-season storage of boats at 3622 Main Road, Tiverton, RI being Plat 707 Lot 111 on Tiverton Tax Assessor's maps and located in a R80 zoning district, and reconsideration of Zoning Board's June 1, 2016, denial of a petition filed by Bruce H Cox, Attorney for Valley Farm LLC c/o Robert Glanville of Bristol, RI requesting a special use permit to Article XIV § 7.b. of the Tiverton Zoning Ordinance in order to continue the use of cows and cattle farming, operation of landscaping services on site and off-season storage of boats at 3634 Main Road, Tiverton, RI being Plat 707 Lot 114 on Tiverton Tax Assessor's maps and located in a R80 zoning district.

DECISION:

New Board member Peter Mello recused himself from this petition and left the table.

Attorney John Pagliarini was present and addressed the Board on behalf of the petitioner. Mr. Pagliarini began by saying this is a procedure request and this presentation this evening has nothing to do with the merits of the underlining zoning petition. Mr. Pagliarini claimed that on June 1st this Board denied the petitioner's request for a special use permit in order to continue the use of cows and cattle farming, operating of landscaping services on site and off-season storage of boats. Mr. Pagliarini further stated a request for a continuance was made to the town solicitor and this Board was unaware of it on the night of the scheduled meeting and nobody was present on behalf of the petitioner to present the two applications.

Mr. Pagliarini stated in his opinion procedurally the way the Board voted that evening was defective. Mr. Pagliarini proceeded to say it was just one vote that was made that night even though there were two matters on and it didn't specify which one the continuance or denial was for. Mr. Pagliarini went on to say the rules are that you have to wait twelve months to be heard again unless the Board feels as though there is a reason that it can come back after six months.

Mr. Pagliarini stated after four months, he made an application to this Board that the petitioner would like to come back on December 1st which would have been the sixth month but there have

been three continuances by this Board once because there was a Planning Board of Appeals matter that took precedence and twice because there was no quorum. At this time, Mr. Pagliarini requested that the Board hear this petition before the twelve months on the grounds that he believes that the motion was incorrect and secondly, that the denial was based on not the merits but the fact that there was nobody here to present the petition.

The Chairwoman stated that she read the affidavit which cites Article XII, Section 9(b) of the Tiverton Zoning Ordinance but when she looked at Article XII, it only has three sections and she asked Mr. Pagliarini to explain what he was citing. At this time Town Solicitor Attorney Skwirz stated that was an error and it should be Article VII and went on to discuss Section 9(a) and Section 9(b) of the Zoning Ordinance. Section 9(a) is the section that requires a one-year waiting period before the Board can reconsider, and Section 9(b) states the Board can reconsider in six months if there is an affidavit that shows a substantial change in circumstances. Attorney Skwirz further stated the Board under case law has inherent authority to reconsider if the Board needs to correct an error or correct an injustice.

Mr. Pagliarini stated this petition will be back on June 1st if the Board decides not to grant the request for reconsideration. Mr. Pagliarini further stated if the Board did what they did because the attorney was not present, lesson learned for that attorney. Even though he was not that attorney, he is here tonight to try under the Town's Zoning Ordinance to come back before the twelve month period. Mr. Pagliarini went on to say meanwhile there is a property owner who is trying to move forward with his business who has invested well over a million dollars into two parcels of real estate who wants to be heard by this Board. Mr. Alzaibak responded by saying he appreciates Attorney Pagliarini's frankness.

At this time, the public was invited by the Chairwoman if they wished to address the Board or ask questions of Attorney Pagliarini. Attorney Bruce Cox stated he would like to be heard as a member of the public. Attorney Cox introduced himself and went on to say he is a resident of the Town of Tiverton and further stated he was the attorney for the petitioner when the Board denied the continuance. Attorney Cox went on to say the error was made between himself and Town Solicitor Anthony DeSisto in believing a continuance would be all right. Attorney Cox stated the error was not made by Mr. Glanville and the injustice is to Mr. Glanville. Mr. Cox went on to further say Mr. Glanville is taking a problematic site and trying to make it into a very nice site. The Chairwoman pointed out that the injustice was also to this Board. Attorney Cox agreed and expressed his sincere apologies to the members of the Board.

The Chairwoman thanked Attorney Cox for his apology. There was no further evidence or discussion to present. At this time, the Board went into Executive Session to deliberate. Mr. Collins stated the Board's procedure has always been that when a petitioner doesn't appear, that the Board automatically deny them just to clear it off the books. Mr. Collins went on to say in the past the Board has heard petitioners earlier than the twelve month rule.

Mr. Collins further stated the Board is going to hear this either now or in June so it doesn't make much difference and he suggested the Board allow the request for reconsideration to be heard.

Mr. Alzaibak stated the only person who is getting hurt here is Mr. Glanville. Mr. Alzaibak went on to say he appreciates Attorney Cox coming before the Board and apologizing and as far as he is concerned, he agrees that this request for reconsideration be granted. Ms. Taylor-Humphrey stated she truly believes in the saying that you can catch more flies with honey than vinegar and appreciates the fact that Attorney Cox knows how to catch them the correct way. Ms. Taylor Humphrey also stated she does not agree with Attorney Pagliarini indicating that this Board incorrectly denied this petition at the June 1st meeting. Ms. Taylor Humphrey went on to say understanding the needs of this petitioner and the fact that they are trying to do something good, there is no reason why the Board needs to wait until June to hear this. Mr. Jackson agreed and stated this should be heard as soon as it can.

The Chairwoman stated she sincerely appreciated Attorney Cox for coming and accepting responsibility. The Chairwoman went on to say the problem was compounded by present counsel's arrogance faulting the Board and then submitting an affidavit at the last minute without giving the Board time to look at it. The Chairwoman pointed out that she took the time to read the affidavit and found that there was a wrong section of the statute cited. That being said, the Chairwoman concluded by saying she would not punish a client for the mistakes of his lawyer and she would not have a problem with granting this request for reconsideration but hopes this has been a lesson that's been well learned.

Mr. Collins made a motion to grant the request for a re-hearing of the particular petition as requested on the grounds that the petitioner has demonstrated that the reasons for the Board's initial denial of the petition was caused by errors of individuals on their part and not on the grounds that it was the intentions of the petitioner to not proceed with the motion. Mr. Alzaibak seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey and Mr. George Alzaibak.

3. A petition has been filed by Robert Johnson of Island Avenue Realty, LLC of Tiverton, RI requesting a variance to Article IX Section 1b(3) & 7g(3) of the Tiverton Zoning Ordinance in order to subdivide a 7.78 acre unimproved lot on southerly side of Four Rod Way, a private way, having "0" feet of frontage on a public road which is less than required located at 0 Four Rod Way—west side of Lake Road being Plat 904 Lot 138 on Tiverton Tax Assessor's maps currently in a R80 zoning district.

DECISION:

Attorney Raymond Holland representing the Petitioner requested a continuance to the March meeting due to unavailability of three witnesses. Mr. Collins made a motion to allow the petition to be continued until March 1st, 2017, the next meeting date. Mr. Alzaibak seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey and Mr. George Alzaibak.

4. A petition has been filed by 1888 Main Road, LLC c/o Joseph Triangelo of Cranston, RI requesting a special use permit to Article VI Section 7 of the Tiverton Zoning Ordinance in order to install an advanced treatment onsite wastewater treatment system (OWTS) to replace an existing cesspool serving the existing single family dwelling located at 1888 Main Road, Tiverton , RI being Plat 305 Lot 223 on Tiverton Tax Assessor's maps within the 125 foot minimum setback from the Sakonnet River which requires a special use permit when located in a R40 zoning district.

DECISION:

Mr. Bill Smith of Civil Engineering Concepts representing the petitioner 1888 Main Road, LLC, was present and requested the Board withdraw this petition without prejudice due to the fact that in further inspection of the house, it was found to be unstructurally sound than the condition that the house was thought to be in. Mr. Smith further explained the petitioner is weighing other options. The Chairwoman asked Mr. Smith if he would like to withdraw the petition to an indefinite date and the petitioner can re-file when they are ready and Mr. Smith responded, yes.

Mr. Collins made a motion to withdraw the petition without prejudice and Mr. Alzaibak seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey and Mr. George Alzaibak.

ADMINISTRATIVE ISSUES:

The Board discussed the memo sent from the town solicitor proposing the two ordinances designed to address the ambiguity existing in the accessory structure provisions of the Tiverton Zoning Ordinance highlighted at the November 2, 2016 appeal hearing of David Nguyen. The Chairwoman stated the issue of whether people can have garages in front of their houses even though they are within the setback requirements has come before the Board numerous times.

Mr. Collins recommended the Board point out the inconsistencies in the current ordinance and let the Town Council decide which way they want to go. Mr. Jackson agreed. The Chairwoman stated it's up to the Town Council to clarify whatever the policy is so the Board can apply it to future petitions. It was decided that the town solicitor will draft a letter to the Town Council.

Mr. Alzaibak made a motion to approve the October 5th, 2016 and November 2nd, 2016 Zoning Board meeting minutes. Mr. Collins seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey and Mr. George Alzaibak.

The Chairwoman made a motion to adjourn. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey and Mr. George Alzaibak.

The Zoning Board of Review meeting concluded at 8:12 p.m.

C E R T I F I C A T E

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing 7 pages of the Tiverton Zoning Board of Review minutes are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 16th day of February, 2017.

Salvina S. Ferreira, RPR

My commission expires: September 26, 2017
ID # 28792

LEDGEWOOD COURT REPORTING
Registered Professional Reporters
23 Last Street
Tiverton, RI 02878
(401) 625-5455