

TOWN OF TIVERTON
ZONING BOARD OF REVIEW
MINUTES

April 2, 2014

The following petitions were received and were heard by the Tiverton Zoning Board on April 2, 2014 at 7:00 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairwoman Lise Gescheidt, David Collins, John Jackson, Richard Taylor, Susan Krumholz and Wendy Taylor Humphrey.

Also present were: David Petrarca, Town Solicitor and Mary Ann Escobar, Court Reporter.

1. The Hearing on a petition filed by the Tiverton Yacht Club of 58 Riverside Drive, Tiverton, RI appealing a decision of the Building/Zoning Official dated November 18, 2013 requiring the application of a special use permit in order to install a 1500 gallon septic tank at 58 Riverside Drive, Tiverton, RI being Plat 303 Lot 136 on Tiverton Tax Assessor's maps and located in a R40 zoning district.

DECISION: David Collins recused himself from this matter.

Attorney Kenneth Tremblay appeared on behalf of the Tiverton Yacht Club. Mr. Tremblay gave a brief opening stating that they are looking to replace a damaged 2,000 septic tank which was run over by a truck years ago with a smaller 1,500 septic tank. He also stated that the leaching field and remaining components are still in good condition. This would be the only component that needs to be replaced.

Mr. Wayne Karzenski testified that in 1987 the Tiverton Yacht Club submitted an application for an alteration of an existing system to RIDEM to upgrade its ISDS system. This application was based upon actual water consumption for the facility of 37,000 gallons for the previous year. The application uses a condensed 70 day period to calculate daily water consumption in order to be conservative. Based on that, the daily flow rate of 528.6 gallons a day was presented.

In 2003 the clubhouse burned down and had to be demolished. That same year a dump truck being used for site remediation crushed the cover of the septic tank. The tank has been removed but the remainder of the system is still in place. In 2005 a portable toilet/shower was put on the site. The Club has continued to operate in the same manner it did prior to the fire.

In the nine years that the club has been operating the tanks for this trailer has been pumped on average once a week. Usually they are 1/2 to 2/3 full at the end of the week. Using a conservative assumption that the tanks are full each week results in an average

daily flow rate of 107.1 gallons per day. If the bulk of the usage is assumed to occur during the five day work week, then the calculated flow rate would be 150 gallons per day, still less than a third of the 1987 ISDS capacity. Mr. Karzenski submitted a letter dated September 12, 2013 which goes into great detail in regards to the above summary. The Board marked this letter as Exhibit One.

Mr. Karzenski stated that the peak daily usage of 132.4 gallons occurred on Thursday, August 15. This was a warm summer day where sailing and swimming lessons were held along with open swim later in the day and the weekly pot luck dinner. With all this activity including over 80 participants at the dinner, the water usage was still only ¼ of the 1987 design capacity.

Mr. Karzenski noted that the weekend water usage is on average less than usage during the week since there are no swimming or sailing lessons on the weekends. He stated that the average daily usage for weekends was 23.2 gallons a day and the peak usage was 47.1 gallons on Saturday, August 10. When comparing these figures to the initial calculations for the 1987 ISDS which has the capacity for 525 gallons per day, the 2013 figures are 11 times lower.

The current system has also received a certificate of conformance and this was also submitted to the Board as Exhibit Two. Attached to this certificate of conformance is a diagram of the septic system. Mr. Karzenski stated that the Yacht Club has no intention of changing anything about the location or the system nor the design of the system. They just are looking to replace this one component of the system. Mr. Karzenski also stated that the TYC will tie into sewers as soon as they are available to them.

Mr. Tremblay introduced to the Board a document entitled Department of Environmental Management Onsite Waste Water Treatment System Construction Permit dated October 4, 2013 for their review. This was marked as Exhibit Three. It is noted on this permit that the permit states in the upper left hand corner “tank only”.

Ms. Humphrey had a concern about whether once the tank is replaced if any other component of the system fails, will that put the Board in a position that they are granting something more extensive than requested. Mr. Karzenski stated that there are really only three parts to a system; the tank, the leaching field and the distribution box. If a pipe was damaged, they would have to replace the pipe.

Mr. Tremblay stated in reply that if there was something broken with the system, that TYC would have to come back before this Board to request a new ISDS and also go before the DEM again to get permission to do so.

Todd Chaplan, Civil Engineer, appeared before the Board on behalf of the petitioner. The Board unanimously agreed and adopted Mr. Chaplan as an expert witness.

When questioned by Mr. Tremblay about the functionality of the system, he stated that the system functioned normally from the time it was installed until the time of the Yacht

Club fire. There were no issues with the performance of that septic. It's been sitting idle for 10, 11 years. Generally, that is not a problem for leaching fields to be sitting idle and would not cause any problems for future use. Upon reviewing the site the current system appears to be installed and designed properly and satisfactory to DEM regulations regarding the water tables and soils.

Mr. Jackson had a question about whether a 1,500 gallon tank is acceptable to replace the existing damaged 2,000 tank. Mr. Chaplan replied that he wasn't sure why they originally put the 2,000 tank there. He stated that the actual tank size for this design of 525 gallons per day is actually 1,050. They don't make tanks that actual size. They make 1,000, 1,250 and 1,500 gallon tanks. They chose to use the 1,500 because that's the average tank that concrete manufacturers keep on stock and they are easily attainable.

David Campbell, town resident, stated that he wasn't aware of the 2013 permit that DEM issued, stating that his neighbor went on line and could not locate such permit. Ms. Gescheidt asked Mr. Campbell if he was questioning the authenticity of the permit and he stated no, he was not. He wished to request a continuance so that he could review the entire record before he withdraws any opposition that he has. He stated that he doesn't believe that having an installation of a septic within 200 feet of a setback is allowed without a special use permit, and he believes that this new tank should not be an exception to the rule. The Board unanimously agreed to deny any request for a continuance of Mr. Campbell based upon this 2013 was public record.

Steven Hughes stated the following: that he couldn't testify whether DEM sent the building inspector a copy of the permit, but he himself presented a copy to the building inspector in December to ask for his sign off for a letter to CRMC so that TYC could get CRMC sign off. Mr. Hughes stated that Mr. Eames kept it overnight and then gave them the decision that's in front of the board tonight that he regarded the system as an installation and not a repair, and that's the basis of why TYC had to come in front of the board tonight to appeal that decision.

Jay Moran, Jr. appeared before the board stating that he did research the DEM's records and spoke with someone who could not find the DEM permit from 2013.

The Board went into Executive Session to discuss the matter. The discussion entailed whether or not they believed this was a new installation or just a repair of an installation. The Board felt that this was not a new installation and that the tank was only one piece of the entire system that needed to be replaced. The Board also agreed that the 200 foot setback was a moot point tonight due to the fact they are in agreement this is only a repair of one component and not a new installation. They are only here tonight to either overturn or uphold the building inspector's decision.

Mr. Taylor made a motion to overturn the decision of the building official for the reasons that in fact this does not meet the criteria for a special use. This is a repair and not an installation under the ordinance. Mr. Jackson seconded. The Vote was Unanimous.

Voting were: Ms. Gescheidt, Ms. Humphrey, Ms. Krumholz, Mr. Jackson and Mr. Taylor.

2. The Hearing on a petition filed by Steve Perry of ADGKS, LLC of North Providence, RI requesting a special use permit to Article IV Section 2 of the Tiverton Zoning Ordinance in order to construct a multi-family structure, namely a three unit condominium with two bedrooms per unit at 0 Hurst Lane, Tiverton, RI being Plat 203 Lot 137 on Tiverton Tax Assessor's maps whereby a special use permit is required in a R60 zoning district.

DECISION: Attorney Peter Brockman appeared on behalf of the petitioner. Mr. Brockman gave a brief opening stating that this property is on Plat 203, lot 137. It is a large lot, approximately 4 acres, 172,832 square feet. It's in zoning district R60.

The relief they are seeking tonight is a special use permit in order to construct a multi-family dwelling, namely, an attached 3-unit condominium, approximately 1,400 square foot each. And as required under the zoning ordinance Article IV, section II, 60,000 square feet is required for 2 units and 10,000 square feet for every additional unit. So they are asking for a special use permit for 3 units which would require 70,000 square feet. There are wetlands on said property and therefore they can only use upland or usable areas in which to build.

Edward Avizinis, wetland scientist and soil scientist appeared before the board on behalf of the petitioner. Mr. Avizinis presented a CV to the board. Said CV was marked as Exhibit One. The Board approved him as an expert witness.

Mr. Avizinis visited the site and flagged the portions of the site which were wetlands. He pointed out such in the blown up map presented to the Board. Mr. Avizinis calculated that there was 97,683 square feet of wetlands, leaving 75,149 square feet of uplands. Mr. Avizinis stated he prepared a more detailed report. This report was marked as Exhibit Two by the Board.

The opinion of Mr. Avizinis is that this project will not be detrimental to the public health, safety, morals or welfare, will not adversely affect the general character of the area, and will not be a nuisance to the neighborhood.

Todd Chaplan, civil engineer, appeared before the Board on half of the petitioner. The Board unanimously agreed and adopted Mr. Chaplan as an expert witness.

Mr. Chaplan stated that he visited the site three times and prepared a soil evaluation of four different sections of the property. He has put on the plan where the best place for the septic system design would be. This keeps it out of the buffer zone and in the best possible place for functionality. His design would call for an Advantex Filter, two of them, along with a bottomless sand leaching field design framed out with landscape timbers.

Mr. Chaplan also stated that driveways will be permeable and they have designed a couple of small swails which will catch the water from the downspouts and also these swails are required under the CRMC guidelines recommended for residential dwellings.

Mr. Chaplin is of the opinion that this project will not be detrimental to the public health, safety, morals or welfare, will not adversely affect the general character of the area, and will not be a nuisance to the neighborhood. He believes that this project will be compatible with neighboring uses.

He does not believe this project will hinder vehicular or pedestrian traffic in the area. Also, there will be adequate provision for sanitary sewerage disposal and fire protection. Furthermore, Mr. Chaplan believes that this project is compatible with the Comprehensive Plan of the Town of Tiverton.

Ken Scott, Remax Agent and Real Estate Broker, testified that this project is compatible with the Comprehensive Plan. He also believes this is a very appealing project for people in town looking to downsize due to it's a one level and easier accessible for older people.

Dianne Enseldo, a neighbor voiced her opposition to the project. She stated that she's lived in that area for many years and there is a water problem and in the winter an ice problem in the area.

The Board went into Executive Session to discuss the matter. Mr. Collins made a motion to grant the special use permit on the grounds that there is no evidence presented that the project will be detrimental to public health, safety or morals, or welfare, that it is compatible with neighboring uses and will not adversely affect the general character of the area, and it will not create a nuisance in the neighborhood nor hinder or endanger vehicle or pedestrian movement and that water service, sanitary service, et cetera, is appropriate for the property and that it is in fact compatible with the comprehensive community plan. Seconded by Ms. Krumholz. The Vote was unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Taylor, Ms. Krumholz & Mr. Jackson.

Administrative Items: Mr. Taylor made a motion to approve the minutes from March 5, 2014. Seconded by Ms. Krumholz. The Vote was unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Taylor, Ms. Krumholz & Mr. Jackson.

Ms. Krumholz made a motion to adjourn. Seconded by Mr. Jackson. The Vote was unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Taylor, Ms. Krumholz & Mr. Jackson.

ZBR/mae