

TOWN OF TIVERTON
ZONING BOARD OF REVIEW MINUTES

December 3, 2014

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, December 3, 2014 at 7:00 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Richard Taylor, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey and Mr. Alan Doucett.

Also present were: Mr. David Petrarca, Jr., Esq., Town Solicitor, Chris Synnott, Building Official, and Ms. Sally Ferreira, Court Reporter.

1. A petition has been filed by Cellco Partnership d/b/a Verizon Wireless c/o McLane Law Firm, Ryan J. Swartz, Esquire requesting a special use permit to Article IV Section 5.d. of the Tiverton Zoning Ordinance in order to construct a 150' telecommunications tower for the installation of wireless telecommunications equipment by applicant and to promote collocation for other wireless carriers located at 500 Eagleville Road, Tiverton, RI being Plat 205 Lot 104 on Tiverton Tax Assessor's Maps and located in an Industrial zoning district.

DECISION:

The Chairwoman stated that the Board received a letter on November 25th requesting a continuance. Ms. Carol Holahan, attorney with the McLane Law Firm representing Verizon was present along with Attorney Ryan Swartz requesting a continuance for the special permit application and also for the variance application that was filed. Ms. Holahan explained Verizon is reprioritizing the sites that look like they can get finished in 2014 and in early 2015 and this site is not on that list at this time. Ms. Holahan went on to say she would like to hold this application in abeyance until early 2015 when Verizon can make a determination about whether they are going to go forward or not. The Chairwoman reminded Ms. Holahan as stated in the letter that any deadlines would be waived and Ms. Holahan agreed that she would agree to any extensions that are necessary to fulfill the Board's obligation under the Federal regulations.

Ms. Taylor-Humphrey stated she will not be available for the February meeting. Ms. Holahan stated the March date will be fine because she will need time to prepare the additional materials that the Board requested in the October meeting.

Mr. Collins made a motion to allow the applicant to continue this matter until the meeting of March 4th. Mr. Taylor seconded. The vote was unanimous. Voting were: Chairwoman Ms. Gescheidt, Mr. David Collins, Mr. Richard Taylor, Mr. Jay Jackson and Ms. Wendy Taylor-Humphrey.

2. A petition has been filed by Cellco Partnership d/b/a Verizon Wireless c/o McLane Law Firm, Ryan J. Swartz, Esquire requesting a variance to Article V Section 1 of the Tiverton Zoning Ordinance in order to construct a 150' telecommunications tower for the installation of wireless telecommunications equipment by applicant and to promote collocation for other wireless carriers located at 500 Eagleville Road, Tiverton, RI being Plat 205 Lot 104 on Tiverton Tax Assessor's Maps exceeding maximum height allowed in an Industrial zoning district.

DECISION:

The Chairwoman stated that the Board received a letter on November 25th requesting a continuance. Ms. Carol Holahan, attorney with the McLane Law Firm representing Verizon was present along with Attorney Ryan Swartz requesting a continuance for the special permit application and also for the variance application that was filed. Ms. Holahan explained Verizon is reprioritizing the sites that look like they can get finished in 2014 and in early 2015 and this site is not on that list at this time. Ms. Holahan went on to say she would like to hold this application in abeyance until early 2015 when Verizon can make a determination about whether they are going to go forward or not. The Chairwoman reminded Ms. Holahan as stated in the letter that any deadlines would be waived and Ms. Holahan agreed that she would agree to any extensions that are necessary to fulfill the Board's obligation under the Federal regulations.

Ms. Taylor-Humphrey stated she will not be available for the February meeting. Ms. Holahan stated the March date will be fine because she will need time to prepare the additional materials that the Board requested in the October meeting.

Mr. Collins made a motion to allow the applicant to continue this matter until the meeting of March 4th. Mr. Taylor seconded. The vote was unanimous. Voting were: Chairwoman Ms. Gescheidt, Mr. David Collins, Mr. Richard Taylor, Mr. Jay Jackson and Ms. Wendy Taylor-Humphrey.

3. A petition has been filed for three ducks car wash by Michael F Neves of Cape Coral, Florida requesting a special use permit to Article XII of the Tiverton Zoning Ordinance in order to install 3 product LED gasoline price signs replacing the 3 product gasoline price signs on the existing free-standing sign located at 400 Main Road, Tiverton, RI being Plat 113 Lot 497 on Tiverton Tax Assessor's maps whereby a special use permit is required.

DECISION:

Mr. Michael Neves was sworn in and began by saying he knows that LED signs is something that historically has not been allowed in town and clarified that this is not a flashing, movable sign of any sorts. Mr. Neves went on to explain this sign will replace the existing sign which will light up the numbers and he will be able to remotely change the prices from a computer. Mr. Neves further explained when he purchased the car wash, he

spent a lot of money renovating it, changing all the equipment, changing the personnel, and this is just the last piece of the puzzle to upgrade the signage and the facility.

The Chairwoman asked Mr. Neves during what hours would the sign be illuminated and Mr. Neves responded the hours of operation are 6:00 a.m. to 8:00 p.m. Mr. Collins asked Mr. Neves to clarify how the sign itself would change and Mr. Neves replied the only change is physically you would be able to change the price remotely and it would have an outline of the LED lights. Mr. Collins also asked how does the new sign compare to the old sign in terms of how bright the light is and Mr. Neves responded the numbers will be more defined and easier for the public to read. Mr. Neves went on to say there will be no increase in lighting because the existing sign is lit up now.

Mr. Collins asked Mr. Neves if he thought this would have a significant impact on the neighborhood and Mr. Neves responded no. Ms. Taylor-Humphrey asked Mr. Neves whether the new sign would require more or less repair work as time went on and Mr. Neves responded it would be more energy efficient.

There were no questions from the audience. At this time, the Board went into executive session. Mr. Jackson stated he was opposed to this because it changes the whole character of the neighborhood. Ms. Taylor-Humphrey stated she is opposed to LED lights but it will lower energy costs. Ms. Taylor-Humphrey went on to say granting this petition will have a negative effect with respect to the fact that the light has to be lit now all the time instead of just during dusk hours. Ms. Taylor-Humphrey also stated she is not convinced that there's a hardship.

Mr. Collins stated the sign the applicant has now serves his purpose although it may not be the best solution. Mr. Taylor stated he is in favor of anything that will not increase light pollution and it will make it easier for motorists driving by to see the prices and the applicant has met the seven conditions of the special use permit. The Chairwoman agreed with Mr. Taylor.

Mr. Collins made a motion to grant the request for special use permit on the grounds that nothing has changed from the original sign. It's the same hardship and a mere inconvenience exists and that the only change is a minor change from fluorescent lighting to LED style lighting. The public convenience and welfare will be served, it's not detrimental to public health and safety, moral welfare and it's compatible with neighboring uses and will not adversely affect the general character nor create a nuisance and not hinder the neighborhood movement. It will have adequate provisions for water service, sanitary service, disposal and fire protection and it is compatible with the Comprehensive Community Plan of Tiverton because of the conservation issues. The hours of operation will be 6 a.m. to 8 p.m. Mr. Taylor seconded. Voting in favor: Mr. Taylor, Mr. Collins and Ms. Gescheidt. Voting against: Mr. Jackson and Ms. Taylor-Humphrey. The application is denied.

4. A petition has been filed for Four Corners Properties LLC by Timothy T. More, Esquire requesting a special use permit to Article IV Section 4.b. and Section 8.c. of the Tiverton Zoning Ordinance in order to allow concerts, theatrical performances, weddings and other social and community center events at 28 East Road, Tiverton, RI being Plat 706 Lot 111 on Tiverton Tax Assessor's maps whereby a special use permit is required in a Village Commercial zoning district.

DECISION:

The Chairwoman asked Mr. More if he has an objection to combining these two petitions for purposes of introducing evidence and Mr. More stated he had no objection.

Attorney Timothy More representing Four Corners Properties, LLC, introduced Mrs. Weir who is the only member of the LLC. Mrs. Weir was sworn in and stated the Meeting House serves as sort of a gallery and exhibition assembly space for art center type functions, concerts, exhibitions, theatrical events, and wedding receptions and receptions of other descriptions for the last 16 years and in legalizing that use, it was realized that a zoning variance for parking was needed.

Mr. More explained the zoning ordinance states that parking needs to be on the subject parcel or the adjoining parcel and Mrs. Weir has come up with a kind of sharing spaces on the adjoining lot. Mr. More went on to say it has been Mrs. Weir's intent when any of those lots are sold, to impose a set of restrictions on these properties that would provide for shared parking. There will be a deed restriction for shared parking.

Ms. Taylor-Humphrey asked Mrs. Weir whether people can walk safely to the Meeting House and Mrs. Weir responded they have developed a footpath that connects without having to go out to the sidewalk. Mr. Collins asked is the 60 parking spaces available when there is an event going on at the Meeting House and Mrs. Weir answered it has never been an issue. Mrs. Weir further stated staff people with a catering company park somewhere else.

Tricia Hilton, vice-chair of the Conservation Commission came before the Board and stated the Commission reviewed this application last week at their meeting and voted unanimously to come in front of this board to express some concerns. Ms. Hilton went on to say Nonquit Pond supplies drinking water to the City of Newport and Tiverton has a responsibility to maintain the quality of that water. Ms. Hilton expressed in looking at the application, it appears under Article 15, Section 6, any applicant for a special use permit within 2,000 feet of the public drinking water supply is required by law to notify the operator or the municipality that operates that public drinking water supply.

Ms. Hilton went on to say it doesn't appear in this case that the City of Newport has been notified about this application. Mr. More responded by saying notice is a jurisdictional matter so that if this Board renders a decision and the City of Newport feels that somehow this proposal would create some unacceptable risk to Nonquit Pond and their water supply, they could come in and

say this decision is null and void. Mr. More went on to say this Board can proceed and render a decision tonight notwithstanding arguably that the City of Newport didn't get notice. Mr. Petrarca explained the Board has to assume that if this petition has made its way in front of the Board, this Board has jurisdiction. Mr. Petrarca further explained the applicant is appearing at their own risk and it's their burden to prove later in court the challenge that the Board had jurisdiction to render a decision.

Ms. Hilton raised the issue of parking and Mrs. Weir explained her plan to utilize the parking spaces from the adjoining properties.

The Board went into executive session to discuss this matter. Mr. Collins stated this has been operating for 16 years and it has demonstrated that it is compatible with the Town's Comprehensive Community Plan. Mr. Collins further stated it would be an asset to the town and the applicant meets the requirements for the special use. There has never been any major parking problems at night when there is a function going on at Meeting House. Ms. Taylor-Humphrey stated Ms. Hilton gave a very good presentation and counsel appropriately addressed most of her concerns. Mr. Doucett stated he was concerned about the lighting in the parking lot since the events will go to about 11 p.m. Mr. Taylor stated he was concerned about the parking on Main Road and East Road that if it was enforced where would people park.

Mr. Collins made a motion to grant the special use permit on the grounds that the applicant has demonstrated and met all of the requirements based on performance of the project over the last 16 years with the restriction that the event should be over by 10:30. Mr. Jackson seconded. Voting in favor: Ms. Gescheidt, Mr. Collins, Mr. Jackson and Ms. Taylor-Humphrey. Voting against: Mr. Taylor. The petition was granted.

Mr. Collins made a motion to grant the variance due to the fact there is a physical limitation of where people can park and there are special conditions because they own all the property around it which allows them to park the cars in the other lots in addition to the lot where the Meeting House is located. That granting this relief will not be contrary to the public interest and it would be the least variance and nonconforming uses of neighboring lands, structures and buildings in the same district are not affecting this variance. There is no clear indication that there would be monetary gain by allowing the relief requested. The petitioner is gaining 9 parking spaces giving her a total of 33 parking spaces for this particular lot. The applicant will be required to draft appropriate legal documents to be recorded in the land evidence records to effectuate the restriction of shared parking. Mr. Jackson seconded. Voting in favor: Ms. Gescheidt, Mr. Collins, Ms. Taylor-Humphrey and Mr. Jackson. Voting against: Mr. Taylor. The petition was granted.

5. A petition has been filed for Four Corners Properties LLC by Timothy T. More, Esquire requesting a variance to Article X Section 1.a. of the Tiverton Zoning Ordinance in order to allow less than required parking spaces at 28 East Road, Tiverton, RI being Plat 706 Lot 111 on Tiverton Tax Assessor's maps and located in a Village Commercial zoning district.

DECISION:

The Chairwoman asked Mr. More if he has an objection to combining these two petitions for purposes of introducing evidence and Mr. More stated he had no objection.

Attorney Timothy More representing Four Corners Properties, LLC, introduced Mrs. Weir who is the only member of the LLC. Mrs. Weir was sworn in and stated the Meeting House serves as sort of a gallery and exhibition assembly space for art center type functions, concerts, exhibitions, theatrical events, and wedding receptions and receptions of other descriptions for the last 16 years and in legalizing that use, it was realized that a zoning variance for parking was needed.

Mr. More explained the zoning ordinance states that parking needs to be on the subject parcel or the adjoining parcel and Mrs. Weir has come up with a kind of sharing spaces on the adjoining lot. Mr. More went on to say it has been Mrs. Weir's intent when any of those lots are sold, to impose a set of restrictions on these properties that would provide for shared parking. There will be a deed restriction for shared parking.

Ms. Taylor-Humphrey asked Mrs. Weir whether people can walk safely to the Meeting House and Mrs. Weir responded they have developed a footpath that connects without having to go out to the sidewalk. Mr. Collins asked is the 60 parking spaces available when there is an event going on at the Meeting House and Mrs. Weir answered it has never been an issue. Mrs. Weir further stated staff people with a catering company park somewhere else.

Tricia Hilton, vice-chair of the Conservation Commission came before the Board and stated the Commission reviewed this application last week at their meeting and voted unanimously to come in front of this board to express some concerns. Ms. Hilton went on to say Nonquit Pond supplies drinking water to the City of Newport and Tiverton has a responsibility to maintain the quality of that water. Ms. Hilton expressed in looking at the application, it appears under Article 15, Section 6, any applicant for a special use permit within 2,000 feet of the public drinking water supply is required by law to notify the operator or the municipality that operates that public drinking water supply.

Ms. Hilton went on to say it doesn't appear in this case that the City of Newport has been notified about this application. Mr. More responded by saying notice is a jurisdictional matter so that if this Board renders a decision and the City of Newport feels that somehow this proposal would create some unacceptable risk to Nonquit Pond and their water supply, they could come in and say this decision is null and void. Mr. More went on to say this Board can proceed and render a decision tonight notwithstanding arguably that the City of Newport didn't get notice. Mr. Petrarca explained the Board has to assume that if this petition has made its way in front of the Board, this Board has jurisdiction. Mr. Petrarca further explained the applicant is appearing at their own risk and it's their burden to prove later in court the challenge that the Board had jurisdiction to render a decision.

Ms. Hilton raised the issue of parking and Mrs. Weir explained her plan to utilize the parking spaces from the adjoining properties.

The Board went into executive session to discuss this matter. Mr. Collins stated this has been operating for 16 years and it has demonstrated that it is compatible with the Town's Comprehensive Community Plan. Mr. Collins further stated it would be an asset to the town and the applicant meets the requirements for the special use. There has never been any major parking problems at night when there is a function going on at Meeting House. Ms. Taylor-Humphrey stated Ms. Hilton gave a very good presentation and counsel appropriately addressed most of her concerns. Mr. Doucett stated he was concerned about the lighting in the parking lot since the events will go to about 11 p.m. Mr. Taylor stated he was concerned about the parking on Main Road and East Road that if it was enforced where would people park.

Mr. Collins made a motion to grant the special use permit on the grounds that the applicant has demonstrated and met all of the requirements based on performance of the project over the last 16 years with the restriction that the event should be over by 10:30. Mr. Jackson seconded. Voting in favor: Ms. Gescheidt, Mr. Collins, Mr. Jackson and Ms. Taylor-Humphrey. Voting against: Mr. Taylor. The petition was granted.

Mr. Collins made a motion to grant the variance due to the fact there is a physical limitation of where people can park and there are special conditions because they own all the property around it which allows them to park the cars in the other lots in addition to the lot where the Meeting House is located. That granting this relief will not be contrary to the public interest and it would be the least variance and nonconforming uses of neighboring lands, structures and buildings in the same district are not affecting this variance. There is no clear indication that there would be monetary gain by allowing the relief requested. The petitioner is gaining 9 parking spaces giving her a total of 33 parking spaces for this particular lot. The applicant will be required to draft appropriate legal documents to be recorded in the land evidence records to effectuate the restriction of shared parking. Mr. Jackson seconded. Voting in favor: Ms. Gescheidt, Mr. Collins, Ms. Taylor-Humphrey and Mr. Jackson. Voting against: Mr. Taylor. The petition was granted.

ADMINISTRATIVE ISSUES:

Mr. Taylor made a motion to accept the minutes of the November Zoning Board meeting as written. Mr. Collins seconded. The vote was unanimous. Voting were: Chairwoman Ms. Gescheidt, Mr. David Collins, Mr. Richard Taylor, Mr. Jay Jackson and Ms. Wendy Taylor-Humphrey.

The Chairwoman addressed the letter the Board received from Ms. Lizabeth Cottrell of 1696 Fish Road. In the letter, Ms. Cottrell expressed her frustration that nothing is being done to enforce the building and zoning laws that her neighbor Mr. William McLaughlin was found in

violation of. The Chairwoman asked if there was anything this Board could do. Mr. Petraca replied this is not on the agenda to allow for any action by the Board tonight and it could be put on the next agenda although that might be too late. Mr. Petraca stated the Board as private citizens can write a letter to the town council expressing their concern. The Chairwoman stated she would be happy to send a letter.

There was no further business or discussion. Mr. Collins made a motion to adjourn. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Richard Taylor, Mr. Jay Jackson and Ms. Wendy Taylor-Humphrey and Mr. Alan Doucett.

The Zoning Board meeting concluded at 9:19 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 9 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 22nd day of December, 2014.

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