

TOWN OF TIVERTON
ZONING BOARD OF REVIEW
MINUTES

March 4, 2015

The following petitions were received and were heard by the Tiverton Zoning Board on March 4, 2015 at 7:00 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairwoman Lise Gescheidt, Mr. David Collins, Mr. John Jackson, Mr. Richard Taylor, Wendy Taylor Humphrey, Alan Doucet and Mr. George Alzaibak.

Also present were: Andrew Teitz, Esquire, Representing the Board, Mary Ann Escobar, Court Reporter and Neil Hall, Building Official.

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: A representative from Verizon Wireless, Chris Swiniarski, appeared before the board and requested a continuance in order to obtain additional information requested by the Board at an earlier hearing. Mr. Collins made a motion to allow them to continue without prejudice. Mr. Taylor seconded. The Vote was unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Jackson, Mr. Taylor and Ms. Humphrey. Mr. Teitz also stated that this continuance is with the Board's understanding that the petitioner would file a waiver of the Federal 120 day time clock for this petition which would then not begin to run until the meeting it's continued to. Mr. Swiniarski agreed. The petition was continued until May 6, 2015.

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: A representative from Verizon Wireless, Chris Swiniarski, appeared before the board and requested a continuance in order to obtain additional information

requested by the Board at an earlier hearing. Mr. Collins made a motion to allow them to continue without prejudice. Mr. Taylor seconded. The Vote was unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Jackson, Mr. Taylor and Ms. Humphrey. Mr. Teitz also stated that this continuance is with the Board's understanding that the petitioner would file a waiver of the Federal 120 day time clock for this petition which would then not begin to run until the meeting it's continued to. Mr. Swiniarski agreed. The petition was continued until May 6, 2015.

3. A petition has been filed for Eloise A. Kent by her attorney Kenneth R. Tremblay requesting a variance to Article IX Section 7.g.1 of the Tiverton Zoning Ordinance in order to create a Rural Compound of two lots with less than required lot frontage on a public road at 765 Stafford Road, Tiverton, RI being Plat 210 Lot 101 on Tiverton Tax Assessor's maps and located in a R60 zoning district and partially in the Watershed Protection Overlay District.

DECISION: Attorney Kenneth Tremblay appeared before this Board representing the petitioner. He stated that his clients wish to put a two bedroom house on this piece of land. They have already gone to the planning board and received a letter of recommendation from the Planning Board. They are planning to have this property subdivided as a rural compound. The entrance to this property is 15 feet. The Ordinance requires 40 feet. They are planning to make this a rural compound. A rural compound subdivision has the unique property to it that once you approve a rural compound it could no longer be subdivided any further. He stated that on the plan they have drawn up, there is a general note that says no further subdivision be allowed. In addition to that, there will be a restriction put on the land evidence records that let's anybody know it.

Mr. Tremblay also stated that the planning board had a concern of neighbors cutting through the property and using it. Based on that concern, his clients will put another restriction stating that only the two houses on said property be allowed to use that driveway. Also based on some concerns by the Fire Chief, they are going to widen the driveway at the beginning in order for any fire apparatus that might be called to that property be allowed to turn around without backing up into the street.

Ms. Kent appeared before the board and testified as follows: There has been a summer cottage on this property since the 1930's. It's been family owned and members of the family have enjoyed the cottage each summer since they were children. She now wishes to build a quaint two bedroom home on this property. Ms. Kent showed the board a plan of her proposed house, which was marked as Exhibit 1.

Ms. Kent stated that her, her husband and her brother currently maintain the road on this property. She stated that the property means a lot to her and her family. She does not want to tear down the existing cottage. The family still uses it from time to time in the summer. Where she wants to build the new house would not block anyone's view of the pond. It is a small house, around 1,100 square feet, and it's not very tall either.

Todd Chaplin, Engineer, appeared and testified before the board as follows: He designed a plan of the property, including flagging the wetlands. Mr. Chaplin testified that this property complies with all the requirements for a rural subdivision except for the 40 foot frontage. He stated that no construction will be done in the watershed area. Nor will the driveway turnaround for the firetrucks effect the watershed area. Mr. Chaplin did design a septic for a 3-bedroom house just because it was more cost effective and will be way over what they need as far as a septic system. It's already been approved by RI-DEM.

Keith Roberts, Real Estate Appraiser, was called upon to testify. He stated that this proposed plan in his opinion is in compliance with the Comprehensive Community Plan, and will not cause any detriment to the surrounding properties. He stated that it will not affect the value of the surrounding properties. Mr. Roberts also stated that the requested relief was not something that the applicants caused themselves and it is the least relief needed for this applicant.

The Board went into Executive Session to discuss the matter. Mr. Collins made a motion to request the relief necessary due to the unique characteristics of the piece of land. He believed that they have shown that it would be a hardship on the petitioner if they were not allowed to build said house. Also, that this new proposed house would not be a detriment to the surrounding properties. Mr. Collins stated that this would be the least relief necessary

Also added to the motion would be the requirement that a restriction be placed on said property that it cannot be further divided, a restriction be placed on the land use records that it is a private road, and that the driveways be clearly marked in order for emergency vehicles to respond if necessary.

Mr. Taylor seconded the motion. The Vote was Unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Jackson, Mr. Taylor and Ms. Humphrey.

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: Mr. More appeared before the Board requesting a two month continuance on this matter. The Board had questions of why he is asking for the continuance. Mr. More stated that he spoke with Mr. Teitz several weeks before this hearing and briefly before the hearing began regarding this petition and whether or not he can move forward with the special use permit and dimensional variance together. Mr. Teitz wanted to state on the record the following: He spoke to Mr. More previously regarding this petition

and it is his opinion that Rhode Island law does not permit one to seek a special use permit and a dimensional variance from a zoning board unless the local municipality has specifically authorized it in its zoning ordinance, and that this Board could not hear these requests in his opinion.

Mr. Collins made a motion to continue this matter until May 6. Mr. Jackson seconded. The Vote was Unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Jackson, Mr. Taylor and Ms. Humphrey.

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: Mr. More appeared before the Board requesting a two month continuance on this matter. The Board had questions of why he is asking for the continuance. Mr. More stated that he spoke with Mr. Teitz several weeks before this hearing and briefly before the hearing began regarding this petition and whether or not he can move forward with the special use permit and dimensional variance together. Mr. Teitz wanted to state on the record the following: He spoke to Mr. More previously regarding this petition and it is his opinion that Rhode Island law does not permit one to seek a special use permit and a dimensional variance from a zoning board unless the local municipality has specifically authorized it in its zoning ordinance, and that this Board could not hear these requests in his opinion.

Mr. Collins made a motion to continue this matter until May 6. Mr. Jackson seconded. The Vote was Unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Jackson, Mr. Taylor and Ms. Humphrey.

ADMINISTRATIVE ITEMS: Mr. Taylor made a motion to approve the amended February minutes. (See attached Revised February minutes). Ms. Gescheidt suggested a change to the minutes to indicate that Mr. Ruggiero replied that the town had prevailed in court despite Mr. McLaughlin's appeal and that it's simply a matter of enforcing that judgment. Mr. Jackson seconded. The Vote was Unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Jackson, Mr. Taylor and Ms. Humphrey.

Mr. Alzaibak wished to express on the record the following: that as a citizen in this town and business owner in this town and also having served on boards, he feels that Mr. Peter Ruggiero and his firm have been very professional and have done a great job for this town. They are very respectful. Their opinions have been very valuable for the town for the boards they advise. He stated it's a shame how things end up sometimes. But he

wanted to take a minute to thank them. They have done an excellent job for the town and he feels that they should be recognized for that. The Board Members agreed. Mr. Jackson made a motion to adjourn for the evening. Mr. Collins seconded. The Vote was unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Jackson, Mr. Taylor, Ms. Humphrey, Mr. Doucet and Mr. Alzaibak.

Whereupon the meeting ended at 8:28 p.m.

ZBR: MAE

C E R T I F I C A T E

I, Mary Ann C. Escobar, Registered Professional Reporter, and Commissioner for the State of Rhode Island, do hereby certify that the foregoing pages 1 through 6 are complete, true and accurate to the best of my knowledge, skill & ability.

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

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 24th day of March, 2015.

Mary Ann C. Escobar, RPR

My Commission expires: September 30, 2016.

* * * * *

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

(Amended minutes for February – attached)

TOWN OF TIVERTON
ZONING BOARD OF REVIEW MINUTES

February 4, 2015

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, February 4, 2015 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, Mr. Alan Doucet and Mr. George Alzaibak.

Also present were: Mr. Peter Ruggiero, Esq., Town Solicitor, Neil Hall, Interim Building Official, and Ms. Sally Ferreira, Court Reporter.

1. A petition has been filed by Jonathan A & Rebecca Cottrell of Tiverton, RI requesting a variance to Article V Section 1 of the Tiverton Zoning Ordinance in order to construct a second story residential addition on an existing commercial structure creating a mixed use multi-family development, where only 2 residential units are allowed by right and 8 residential units are proposed at 35 Main Road, Tiverton, RI being Plat 101 Lot 118 on Tiverton Tax Assessor's maps exceeding the allowed number of residential units and density located in a Traditional Main Street zoning district.

DECISION:

Jonathan Cottrell was sworn in and stated he would like to build 6 individual one-bedroom affordable housing units on top of his existing commercial building which is up in North Tiverton and there is already a multi-family, two-unit building on the premises. Mr. Cottrell went on to say the property extends from Main Road all the way through to Audet Street which is a short, two-way dead end street. Mr. Cottrell further stated on the advice and request of the Planning Board the plans drawn up by the engineer shows all of the appropriate parking and the different parking spaces that would be required and to show curb cuts and entrances and exits.

Melissa Hutchinson a registered architect in the State of Rhode Island for 12 years was sworn in and was accepted as an expert witness by the Board upon reciting her qualifications. Ms. Hutchinson explained that this area has been rezoned Traditional Main Street and under Tiverton's form base code, this area is listed as residential. Ms. Hutchinson stated the plan is to have just one-bedroom units so as not to increase or tax the infrastructure of the town but provide additional market rate affordable units. Ms. Hutchinson also stated the units will be tied into the city sewer that goes back along Audet Street.

Ms. Hutchinson went on to say this absolutely fits the model for the Traditional Main Street because it would increase the density along the corridor so that the boutique shops and the businesses along this corridor would thrive on this increased density. Ms. Hutchinson also stated

Zoning Board of Review – 02/04/2015

Page 2

they are using the existing footprint of the bowling alley building and building the proposed units straight up so there would be no increase of lot coverage.

The Chairwoman asked Ms. Hutchinson to address the issue of parking. Ms. Hutchinson stated the engineer completed a survey to show that there is adequate parking and adequate drive-thru between Main Road and back to Audet Street and has shown all of the spaces that would be required for both the commercial and the tenants.

Ms. Hutchinson further stated there is existing parking that's shared between these two buildings and because the two lots are owned by the same owner, you can come in from Main Road from either side and stacked parking would work in this area. Ms. Hutchinson gave an example that if one unit had two spaces they would be assigned the stacking spaces. Ms. Hutchinson explained there are additional parking spaces and there is a two-car garage on the lot and then there is parallel parking spaces that go out towards the Audet Street portion and there are two additional spaces behind what is being called the bowling alley building, and two parking spaces on Main Road which parking is allowed there.

Mr. Taylor commented Main Road is not wide enough in front of the commercial building. Ms. Hutchinson replied the petitioner intends to submit a Physical Alteration Permit to the state because Main Road is a state road where potentially they could recommend widening the curb.

Mr. Cottrell stated through the different meetings with Planning and with DPW and the fire and police chief and head of zoning 20 spaces is what they required. Mr. Alzaibak commented that the petitioner is relying on Main Road for parking which will take away parking for the commercial businesses.

Mr. Doucet asked Mr. Cottrell how he plans on managing waste removal and Mr. Cottrell responded there is a dumpster there now. Mr. Doucet further asked how Mr. Cottrell plans to accommodate what would be an increase to waste removal. Mr. Cottrell responded he has a 30 yard dumpster that his tenants use when they have an overload, but they do put out their recycling and they do put out bags every week. Mr. Alzaibak commented the dumpster is in the back of the building and faces Audet Street so the neighbors on Audet Street are looking at that construction dumpster all the time. Mr. Cottrell responded there are probably a couple of houses that do see it. Mr. Cottrell further stated he has never had any zoning complaints about the dumpster and has never been cited by the town.

Mr. Alzaibak asked Mr. Cottrell who he thinks is going to rent these single units. Mr. Cottrell stated he is trying to appeal to the younger citizens of Tiverton who find it difficult to afford a place in town where they can live. Mr. Cottrell further stated he certainly can see if there's a young couple and they have a baby on the way that it may suffice for some time but then without the accommodations, he would expect they would move.

Zoning Board of Review – 02/04/2015

Page 3

The Chairwoman asked Mr. Cottrell to address the standards with the special conditions and circumstances that the Board is required to apply for granting a variance. Mr. Cottrell replied he is not familiar with the standards. The Chairwoman informed Mr. Cottrell in order for the Board to grant the relief that is being requested, the Board has to make positive findings on six statutory criteria that a petitioner has the burden of proving exists. Mr. Cottrell stated without having

formulated or considered the standards at any level except for hearing about them today to have an argument before this Board to help base a decision, his only reply to that would be that an effort is needed in North Tiverton and in this particular area there are these properties they want to see more habitable, affordable units where there's already that type of existing infrastructure to support a walking community or a sustainable community.

At this time, audience members were invited to ask Mr. Cottrell any questions. Susan Lima of 11 Audet Street, asked Mr. Cottrell if one dumpster would be enough to accommodate the new residents and Mr. Cottrell responded, yes. Mr. Wayne Marshall of 10 Audet Street asked if the existing sewer pipe is capable of handling additional volume. Mr. Cottrell responded if there is an issue Waste Water will handle it.

Susan Lima stated she has concerns about the proposed parking and submitted a photograph of the existing parking lot. This photograph was marked as Exhibit 1. Ms. Lima went on to address her many concerns. Roger Lord the owner of the property at 29 Audet Street where his daughter and her family live is opposed to this petition and stated his concerns. Mr. Lord in closing strongly urged the Board not to grant this variance because there is no hardship.

Leslie Lord of 29 Audet Street submitted two photographs which the Board marked Exhibit 2 and Exhibit 3. Ms. Lord discussed the exhibits expressing her concerns about parking. Ms. Lord further explained the employees that drive Mr. Cottrell's trucks continually speed on Audet Street and she almost got struck as did her mother. Ms. Lord went on to say she has seen rats near the dumpster and has had to put up with odors coming from the dumpster especially in the summer months.

Paul Reed of 25 Rock Street abuts Mr. Cottrell's property on three sides and stated he was opposed to this because he has many concerns about the parking in that area. Jackie Cayer of 21 Audet Street was opposed to this because she was concerned about parking and the increased traffic. Ms. Cayer further stated she owns a piece of land at the end of Audet Street which she was thinking of building a two-family home on but was told by Waste Water that the sewer pipe couldn't handle it. Ms. Cayer also stated she has had to call an exterminator to come and take care of the rats that are in her garage.

In closing, Mr. Cottrell stated in regards to the standards for granting a variance, he is not changing the general character of the neighborhood and he is working with the zoning that's in place and his hardship is that they forgot to put in density. A short break was taken before the Board went into Executive Session.

Zoning Board of Review – 02/04/2015

Page 4

The Board went into Executive Session to discuss this matter. Mr. Doucet stated the petitioner did not present sufficient evidence of hardship, and if this petition were granted it would alter the general character of the surrounding area. Mr. Collins agreed and further stated the petitioner is getting beneficial use out of the property and he wants to expand the number of units. Mr. Collins went on to say the petitioner did not show that adding 6 units was the minimum relief that he had to have. Mr. Jackson agreed the standard has not been met. Mr. Taylor was concerned about counting on the on-street parking and using the two slots in front of the commercial business for the residential which doesn't seem to meet the criteria. Mr. Taylor went on to say the residential apartments should have to put their trash out like everybody else and not in the dumpster. Mr. Jackson and Mr. Taylor both agreed the drawing for the proposed building is very nice. Mr. Alzaibak agreed the drawings were nice but added the petitioner has issues with his neighbors regarding parking, speeding and the dumpster. The Chairwoman agreed the concept was nice but added it is not this Board's job to define public policy or re-write the statute and the petitioner is asking for five times the relief of density. The Chairwoman also stated there is no expert testimony or any evidence regarding the existing sewerage hookup.

The Chairwoman made a motion to deny the petition to construct a second story residential addition on an existing commercial structure creating a mixed use multi-family development based on the petitioner has not met the standards to warrant the granting of a variance and there is no evidence of any special conditions or circumstances that exist which are special or peculiar to the land or the structure involved

which are not applicable to other land in the same zoning district and are not due to a physical or economic disability of the applicant and that not allowing this project would not be contrary to the public interest or that literal enforcement of our zoning provision would result in an unnecessary hardship. Mr. Taylor seconded. The vote was unanimous. Voting were: Chairwoman Ms. Gescheidt, Mr. David Collins, Mr. Richard Taylor, Mr. Jay Jackson and Mr. Alan Doucet. The petition was denied.

ADMINISTRATIVE ISSUES:

There was a discussion regarding the amended minutes of the December 3rd meeting. Mr. Ruggiero explained there was an objection during the hearing that there was inadequate notice given on this particular application. Mr. Ruggiero further explained in looking through the minutes, there was nothing in the minutes to reflect that. Upon reading the verbatim minutes, Mr. Ruggiero noted the Board had talked about the jurisdictional question and it should be in the minutes because of the relevance of what might happen next and for that reason the minutes should be amended. Mr. Collins made a motion to accept the amended minutes of the December 3rd Zoning Board meeting. Mr. Taylor seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Richard Taylor, Mr. Jay Jackson and Mr. Alan Doucet.

Mr. Taylor made a motion to accept the minutes of the January 7th Zoning Board meeting as written. Mr. Doucet seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. David Collins, Mr. Richard Taylor, Mr. Jay Jackson and Mr. Alan Doucet.

Zoning Board of Review – 02/04/2015

Page 5

Mr. Ruggiero stated the matter of Site Ready is pending. Mr. Taylor asked about the McLaughlin matter and Mr. Ruggiero replied the Town won the appeal and it's up to the Town to prosecute.

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

The Zoning Board meeting concluded at 9:19 p.m.

CERTIFICATE

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing 6 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 23rd day of February, 2015.

Salvina S. Ferreira, RPR

My commission expires: September 26, 2017
ID # 28792

LEDGEWOOD COURT REPORTING
Registered Professional Reporters
23 Last Street
Tiverton, RI 02878
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