

TOWN OF TIVERTON
ZONING BOARD OF REVIEW MINUTES

May 6, 2015

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, May 6, 2015 at 7:00 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairwoman Ms. Lise Gescheidt, Mr. Richard Taylor, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey, Mr. Alan Doucet first alternate and Mr. George Alzaibak second alternate.

Also present were: Mr. Peter Swirkza, Esq., Town Solicitor, Neil Hall, 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.

The Chairwoman stated this matter has been continued by agreement based on the absence of Mr. Collins who could not be here tonight and the fact that Mr. Doucet was not present for one of the hearings. This matter will be continued to the next meeting on June 3rd.

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.

The Chairwoman stated this matter has been continued by agreement based on the absence of Mr. Collins who could not be here tonight and the fact that Mr. Doucet was not present for one of the hearings. This matter will be continued to the next meeting on June 3rd.

3. 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.

Ms. Rosaland Weir the applicant was present and stated Attorney More is not here tonight due to the fact there are several issues being brought before other boards regarding this petition. Ms. Weir requested this matter be continued to June 3rd. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. Richard Taylor, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey and Mr. Alan Doucet.

4. 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.

Ms. Rosaland Weir the applicant was present and stated Attorney More is not here tonight due to the fact there are several issues being brought before other boards regarding this petition. Ms. Weir requested this matter be continued to June 3rd. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. Richard Taylor, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey and Mr. Alan Doucet.

5. A petition has been filed by Bruce Manuel of Tiverton, RI requesting a variance to Article V Section 1 and Article V Section 2.c. in order to maintain a previously constructed single family dwelling at 45 Willow Street, Tiverton, RI being Plat 201 Lot 110 on Tiverton Tax Assessor's maps closer to the front property line than the front yard setback minimum of 25 feet and located in a R60 zoning district.

DECISION:

Cheryl Bernard, attorney for Mr. Manuel, stated the house is completed and constructed. Ms. Bernard went on to say Mr. Manuel set the stakes where the foundation was to be poured and when the digging began, they discovered a really large boulder that couldn't be moved so the whole house on the foundation was going to be shifted back a little further. Ms. Bernard also stated one corner of the house is set back 27.1 feet and the other corner which is where the variance is requested for is 23.7.

Mr. Alzaibak asked why Mr. Manuel didn't come forward and get permission to move the foundation forward because there was a boulder there before constructing the house. Ms. Bernard responded this was only discovered when the as-built plan was done to get the occupancy permit. Ms. Taylor-Humphrey stated after the foundation is poured, the building inspector is supposed to come out and inspect at that time before the actual construction of the house continues. At this time, Mr. Manuel was asked to give testimony.

Mr. Manuel was sworn in and stated he did get a foundation inspection by the temporary building inspector. The Chairwoman asked if Mr. Manuel has any documentation that the building inspector signed off on it and Mr. Manuel responded it would be noted on the building permit. Ms. Jodi Roy was sworn in and stated the document is part of the building file. Ms. Roy stated that when the building inspector goes out to do a foundation inspection, they are going out to make sure that the foundation is done correctly not the location. Mr. Neil Hall the building official added that he is not an engineer nor a land surveyor and when he goes out to do a foundation inspection, he is looking to make sure the

foundation is damp proofed and the anchor bolts are properly put in place. Mr. Hall further stated it's up to the contractor to locate the foundation.

Ms. Taylor-Humphrey asked Mr. Manuel if he had evidence to show that the stakes were properly set. Mr. Manuel responded the foundation company told him they were going to shift the foundation to miss the boulder and the measurements that Mr. Manuel took he thought he had enough room to shift it. Mr. Manuel went on to say he shifted the stakes 8 inches back which shifted the foundation 8 inches forward which made it the 17 inches that are off.

Mr. Alzaibak asked Mr. Manuel if he saw the boulder and Mr. Manuel responded he did. Mr. Alzaibak asked if the boulder could have been removed and Mr. Manuel responded his excavator spent almost a day to dig all the way around it to try to move it or bury it and there was absolutely no movement. Mr. Doucet asked if it was impossible to move the boulder and Mr. Manuel stated it was impossible for him and his excavator contractor to move it.

Amy Waluk of 50 Willow Street and a neighbor was sworn in and stated she lives right across the street from the new constructions and objects to the home being there. Ms. Waluk went on to say she has lived there for 20 years and parked for those 20 years where they decided to put the driveway and now she has to park in the street.

Frank Case also of 50 Willow Street was sworn in and stated this construction has caused a little bit of an inconvenience. Mr. Case stated the road is very narrow and parking there is tight. Mr. Case went on to further say there was privacy there with the woods right across the street but now there is a house that's too close to the road.

Greg Medeiros business partner and co-owner of the property with Mr. Manuel was sworn in and stated financial gain was never considered in shifting the foundation to avoid the boulder. Mr. Medeiros went on to say it was never discussed it was too expensive to blast or jack hammer the boulder. Mr. Medeiros further stated it was an honest mistake on Mr. Manuel's part when he shifted the stakes slightly and he honestly thought he had enough room.

In summary, Ms. Bernard stated granting the variance will not alter the general character of the neighborhood nor be contrary to the public interest and Mr. Manuel did not maximize the total use of the land. Not granting this variance will cause an undue hardship to Mr. Manuel as the house would have to be torn down.

At this time, the Board went into executive session. Mr. Alzaibak stated he went down to look at the house and the house is beautiful. It does not look crooked or out of shape, it has its own parking and it's not oversized for the lot. Mr. Jackson stated he doesn't feel Mr. Manuel intentionally moved the house to encroach upon the line. Mr. Doucet agreed with Mr. Jackson but added the bottom line is it was done. Mr. Doucet further stated all he kept hearing is economic hardship and that is not something he can do much with.

Ms. Taylor-Humphrey stated Mr. Manuel failed to re-measure and make sure he was within the appropriate setback which caused the hardship. Mr. Taylor asked what would be gained by tearing it down. Mr. Taylor went on to say 17 inches is a pretty minimum amount of relief.

The Chairwoman stated she found the applicant to be credible and honest. Mr. Alzaibak further stated Mr. Manuel could have easily moved the foundation 17 inches back on the corner because he had plenty of room on this lot. Mr. Alzaibak concluded by stating the applicant made an honest mistake.

Mr. Taylor made a motion to grant the 17 inches of relief on the front yard setback and to correct it will be more than a mere inconvenience, the 17 inches is the minimum relief necessary for the 11 feet of the house. The boulder was not placed there by Mr. Manuel. The house is in keeping with the neighborhood and it is certainly not going to affect property values. The Chairwoman seconded. Voting in favor: Chairwoman Lise Gescheidt, Richard Taylor and Jay Jackson. Voting against: Ms. Wendy Taylor-Humphrey and Mr. Alan Doucet. The vote was 3 to 2 and a 4 to 1 vote is needed to approve. The motion was denied.

ADMINISTRATIVE ISSUES:

Mr. Taylor made a motion to accept the minutes of the April 1, 2015 Zoning Board meeting as written. The Chairwoman seconded. The vote was unanimous. Voting were: Chairwoman Ms. Lise Gescheidt, Mr. Richard Taylor, Mr. Jay Jackson, Ms. Wendy Taylor-Humphrey, Mr. Alan Doucet and Mr. George Alzaibak.

Mr. Taylor stated he went to a land use seminar hosted by Gross Mart Rhode Island for planning boards and zoning boards. Mr. Taylor stated one of the things that was brought up is once the Board accepts someone as an expert, it is difficult to counter their testimony. Mr. Taylor further stated the seminar talked about how the motions have to have pretty detailed findings of fact and credibility determinations and not just rely on the language of the statute.

Ms. Taylor-Humphrey stated she and Ms. Gescheidt attended a zoning board workshop. Ms. Taylor-Humphrey stated the Board should ask the applicant to submit proposed findings of fact and conclusions of law before making a decision that night. Ms. Taylor-Humphrey went on to say the seminar suggested if something is difficult and a motion needs to be crafted very carefully, the Board may continue it, table it, bring it back the following month and the motion gets made at that point. Ms. Taylor-Humphrey also stated when a motion is being made, it has to be made in full and you cannot stop making the motion in the middle of it and go into some other discussion or narrative. Nobody else should be speaking. It should just be the person making the motion so that it's very clear and identifiable to what is being made.

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

The Zoning Board meeting concluded at 8:41 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 5 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 26th day of May, 2015.

Salvina S. Ferreira, RPR

My commission expires: September 26, 2017
ID # 28792

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