

STATE OF RHODE ISLAND
NEWPORT S.C.

ZONING BOARD OF REVIEW
TOWN OF TIVERTON

PETITION OF JOSEPH AND SUSAN FARIA

DECISION

This matter came before the Town of Tiverton Zoning Board of Review (the "Board") for a duly noticed and advertised hearing on Wednesday, September 4, 2019 on the petition of Joseph Faria and Susan Faria, 13 Crandall Road, Tiverton Rhode Island, being Tiverton Tax Assessor Map Plat 513 Lot 124 requesting a variance to Article V, Section 1, the Dimensional Regulations Table, in a Pedestrian Friendly District in order to allow for a means of egress from a restaurant establishment, Wally's Taphouse, onto an existing patio. The minimum setback required is 10' and the applicant is requesting a 4' variance for the additional egress. Present and voting for the Board were Chairwoman Lise Gescheidt, Mr. David Collins, Mr. John Jackson, Mr. George Alzaibak, and Ms. Jennifer Hilton, first alternate, voting on this petition for the absent member Ms. Wendy Taylor-Humphrey. Also present for the Town were Matthew Fabisch, Assistant Town Solicitor and William Moore, Building Official.

HEARING

Mr. Faria appeared, *pro se*, before the Board stating that he needs to add an additional means of egress from his restaurant upon the request of the Fire Department. He built this deck five years ago with a permit he received from the Town. The Town never had any problems with this deck until now. Now the Town is saying he is too close to the setback requirements in order to expand it. He currently has a patio which has sides to it and in order to make the additional

means of egress he will need to tear down the wall and add a patio to connect to the existing one for customers to come and go. He stated he has not been able to use this patio due to this requirement. He does not want to have to come before this Board, but he has to according to the Fire Department.

The Building Official, William Moore, explained that he is aware of the Fire Department's request in order to bring the existing deck into compliance with the Fire Code and is in agreement with the proposed petition. Ms. Gescheidt asked Mr. Faria to approach the table and explain what was being proposed. Mr. Faria approached the Board and showed them what he had to do in order to be able to use this deck for his business. He pointed out that he needed to extend the deck running along the easterly side of his building to the north side in order to allow for the means of egress from the existing deck on the northerly side of the property. Mr. Moore confirmed Mr. Faria's explanation.

Mr. Joel Bishop, a town resident testified stating that he had been to the property and that he was in favor of the petition. With no further questions from the board or the public, the board started deliberations.

DELIBERATION AND FINDINGS

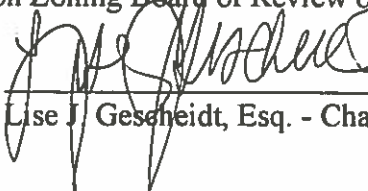
Thereupon the Mr. Collins proposed a motion to approve the requested variance and findings in accordance with Article XVII, § 2 of the Tiverton Zoning Ordinance which the Zoning Board adopted taking into consideration its knowledge and expertise, and after taking into consideration all of the materials contained in the application, all exhibits received, and the testimony at the public hearing:

1. That the relief requested is not contrary to the public welfare in that permitting the egress will improving the health and welfare of the public
2. That this will not alter the characteristics of the surrounding area
3. That this will not impair the intent or purpose of the zoning ordinance.
4. That the four feet requested is the least relief necessary in order to comply with ADA requirements
5. That special conditions and circumstances exist which are special or peculiar to the land or structure involved, and which are not applicable to other lands or structures in the same zoning district, and are not due to a physical or economic disability of the applicant in that the deck is preexisting but requires the variance in order to add the egress which is being required by the Fire Department in order to use the deck.
6. Relief will not be contrary to the public interest, and owing to special or peculiar site or structural conditions, literal enforcement of the provisions of this ordinance would result in an unnecessary hardship to the applicant because by adding the means of egress requested by the Fire Department the applicant is improving the health and safety of the public by providing another means of egress in the event of an emergency and a failure to grant the relief would result in the applicant being unable to use the existing deck.
7. That the unnecessary hardship which this Petitioner seeks to avoid is not the result of any prior action of the applicant nor motivated purely by monetary gain or loss, in that the deck has been in existence and the requested relief is intended to allow the Petitioner comply with a new request of the Fire Department while complying with the state building and fire code relative to access and egress.
8. That granting of the variance will not affect the general character of surrounding areas as portrayed by the plans that were submitted by the petitioner.
9. That the granting of this variance represents the least variance required to remove the hardship in that the proposed variance is the minimum needed to provide for reasonable use of the deck.
10. That this variance is not based in any manner on present nonconforming adjacent properties but is instead based on the unique circumstances attendant to this property because the petition is based on the existing deck and no evidence was taken as to adjacent nonconforming properties.
11. That the hardship suffered by this owner would amount to more than a mere inconvenience if the variance was not granted because the petitioner would no longer be permitted to use the already existing portion of the deck for lack of alternative means of egress.
12. Granting this petition is consistent with the Comprehensive Plan in Tiverton because it allows for continued full use of a property consistent with the uses called for in the Pedestrian Friendly Zoning District.

Mr. Jackson seconded. The Vote was unanimous. Voting in favor were Ms. Gescheidt, Mr. Collins, Mr. Jackson, Mr. Alzaibak and Ms. Hilton.

ACCORDINGLY, THE PETITIONER'S VARIANCE REQUEST WAS GRANTED.

Entered as the official decision of the Tiverton Zoning Board of Review on this 14th day of December, 2019.



Lise J. Gescheidt, Esq. - Chair

CERTIFICATION

I, Julio Barrett, certify that I sent a true copy of the within decision, by regular mail, postage prepaid, to the applicant on the 31st day of December, 2019.



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