

**TOWN OF TIVERTON
ZONING BOARD OF REVIEW
DIMENSIONAL VARIANCE**

APPLICANT: Robert & Coleen Barboza
PROPERTY OWNER: Same as applicant
PROPERTY: 267 King Road
PLAT MAP 510 **LOT:** 109
PRESENT ZONING: R-80
PRESENT USE: Single Family Home One Lot

RELIEF REQUESTED:

The applicant proposed to subdivide his property into two separate lots resulting in a minor subdivision. The newly created lot, Lot #1, does not meet the minimum lot width of 200 feet in an R-80 Zone as set forth in Article V, section 1. The new Lot #2 does not meet the minimum side yard setback of 35 feet as set forth in Article V, section 1.

In support of the request, the applicant submitted a completed Tiverton Zoning Board Application, an Advisory Opinion from the Tiverton Planning Board in favor of the application dated January 22, 2020, a memorandum from the Town's building inspector dated December 18, 2019 outlining the zoning relief requested, an email from Rhode Island DEM dated April 4, 2019, engineering review reports from Steere Engineering Inc. dated August 27, 2018 and June 12, 2018, correspondence from the Rhode Island DEM related to a permit for alterations to wetlands dated September 9, 2018, an application and a follow-up letter dated November 20, 2017 from Rhode Island DEM, a certificate of completeness from the Tiverton Planning Board, and two maps, one dated August 1, 2018 and labelled a "On-site Wastewater Treatment System," and one undated and labelled "Preliminary Minor Subdivision Plan."

The Zoning Board received comments concerning the request at a legally noticed hearing held on February 5, 2020 at 7 p.m.

Zoning Board members present: Vice Chair David Collins, Jackson, Taylor-Humphrey, Alzaibak, and 1st Alternate Hilton.

The following individuals spoke as representatives of the applicant: None, other than the applicant.

The applicant testified that he wishes to subdivide the property of approximately 14.1 acres into two lots. One lot will continue to support a residential dwelling and barn and the other lot is proposed to support another single family home. The proposed house, however, was located in a wetlands buffer. According the applicant, the RI DEM requested that the home be moved approximately ten feet to avoid an encroachment on wetlands. As such, the side yard setback would be 25 feet instead of the required 35 feet. The relief sought is a variance of 10 feet. The newly created Lot 2 does not meet the minimum width of 200 feet, and a dimensional variance is also necessary.

Based on the following evidence which is part of the record, the Board finds that the hardship from which the applicant seeks is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding areas.

As shown on the submitted maps, the property contains significant wetlands, which limits the placement of any structures, driveways, and other features typical in a minor subdivision. For instance, the RI DEM has requested and encouraged a variance of a side yard setback in order to keep the proposed dwelling out of the 50 foot perimeter wetland. The wetland is extensive and is a unique feature of this property, which has influenced the need for both of the variances that have been requested.

Based on the following evidence which is part of the record, the Board finds that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.

The record is devoid of any suggestion that hardship is created by the applicant. The parcel is large and is sufficient enough to be subdivided under the Town's land use regulations. The applicant is desirous of creating a second lot on the property for either himself or his daughter while preserving grazing land for the farm animals on the property. Testimony from the applicant also noted that part of the land is designated as farm, forest, and open space which does not allow development on that portion of the land so designated.

Based on the following evidence which is part of the record, the Board finds that the relief to be granted is the least relief necessary.

Based on the location of the wetland and the designation of part of the property as farm, forest, and open space, the applicant's options for placement of the structure are very limited. Therefore, the side-yard setback variance of 10 feet is the least relief necessary, as well as the 95 foot variance related to the lot width.

Based on the following evidence which is part of the record, the Board finds that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience.

Without the limited variance requested, the applicant would not be able to enjoy the full benefit of his property, primarily because of the wetlands and other regulatory requirement of the Rhode Island DEM. As proposed, the subdivision maintains and encourages large areas of grazing land and undisturbed wetlands.

Based on the findings of fact as stated above, the entire record submitted, and applying those facts to the legal standards necessary for a DIMENSIONAL VARIANCE, a motion was made to GRANT both requests by Vice-Chair Collins, seconded by Mr. Alzaibak.

A rollcall was taken and the following members voted AYE TO APPROVE the relief sought: Collins, Jackson, Taylor-Humphrey, Alzaibak, and Hilton.

The official minutes of the meeting of February 5, 2020 are also incorporated by reference into this decision of the Tiverton Zoning Board.

Decision Approved and Accepted this 29th of February, 2020.

David B. Collins
Mr. Collins, Vice-Chair

CERTIFICATION

I, Julie Bancroft, certify that I sent a true copy of the within decision, by regular mail, postage prepaid, to the applicant on the 2nd of March 2020.

JMA

RECEIVED FOR RECORD
Tiverton, R.I.
NANCY L. MELLO TOWN CLERK
Mar 02, 2020 01:00P