

February 10, 2015

Jonathan A. and Rebecca Cottrell
35 Main Road
Tiverton, Rhode Island 02878

Re: Tiverton Zoning Board Relief; Plat 101, Lot 118

Dear Mr. and Ms. Cottrell:

The following is the decision on your petition heard by the Zoning Board of Review (the "Board") on February 4, 2015 for a variance from Article V, Section 1 of the Tiverton Zoning Ordinance to construct a second story residential addition on an existing commercial structure creating a mixed use multi-family development where only two residential dwelling units are allowed by right and eight dwelling units are proposed on property located at 35 Main Road, Tiverton, Rhode Island, being Plat 101, Lot 118 (the "Premises"), exceeding the number of residential dwelling units than is currently allowed in a Traditional Main Street zoning district.

The petitioner appeared along with Melissa Hutchinson, qualified as an expert in architecture, and explained that relief was sought to convert the existing single story commercial structure into a mixed use building. The petitioner explained that a second story would be added to the existing single story commercial structure. Commercial uses would be maintained on the first floor and the second floor would contain six new residential dwelling units. The petitioner explained that sufficient parking was provided for on-site but that two off-street parking spaces were included to comply with the parking requirements for the proposed use. The Board expressed concerns that the applicant could not use off-street parking to conform to the ordinance's off-street parking requirements. Furthermore, the petitioner did not address the questions of the Board regarding the location and adequacy of on-site parking for the existing commercial use of the Premises. In addition, Board members expressed concerns that the proposed open container dumpster on the Premises constituted a health and safety hazard, in addition to having a negative effect on the character of the surrounding area since it was readily visible to abutting residential homes. Several area residents appeared and spoke against the petition on the basis that the parking was insufficient, that commercial truck traffic associated with the existing use of the Premises was disruptive to the existing residential neighborhood and that additional traffic from the new use would worsen this condition, that the sewer line condition and capacity was inadequate, and that the additional residential development was poorly designed and would cause a negative impact on the abutting residential neighborhood. Three pictures were presented, authenticated and admitted to show the undesirable traffic and parking conditions existing on the Premises. The Board expressed concerns that no letter from the Wastewater Management Commission was offered by the petitioner to rebut the statements of inadequate sewer capacity for the project. No additional evidence was presented by the petitioner, other than the submitted plans and application.

After the testimony was completed at the public hearing for which due notice was given and a record kept, the Board, taking into consideration its knowledge and expertise and after taking into consideration all of the testimony at the public hearing, makes the following findings:

1. That the Premises contains approximately 17,178 square feet of land area, more or less, zoned Traditional Main Street.
2. That the petitioner desires to construct a new mixed use building that is large in size and is triple the allowed density.
3. That the petitioner failed to offer sufficient, credible testimony or other evidence at the hearing to meet the burden of proof regarding the stands for the issuance of a variance contained in the Zoning Ordinance at Article XVII, Variances.
4. That the Board did not find credible the testimony of the petitioner that the character of the area would not be changed if the sought after relief was granted.
5. No other facts or evidence were offered by the petitioner in support of its application for zoning relief.
6. The Board concluded that the petitioner's burden was not met for a variance in this instance as there was no evidence submitted of any unnecessary hardship.
7. The Board further concluded the proposed building would in fact increase already unacceptable external impacts on the abutting residential neighborhood.
8. The Board did not find the petitioner's conclusions sufficient credible evidence to show its compliance with the standards of relief necessary to justify the issuance of a variance.

Based on the foregoing, the Board voted unanimously to deny the petitioner's application for a variance, as follows:

- a. Special conditions and circumstances do not exist which are special and peculiar to the land or structure involved, and which are applicable to other lands or structures in the same zoning district, and are due to a physical or economic disability of the petitioner.
- b. Issuance of the requested relief will be contrary to the public interest, and that, owing to special or peculiar site or structural conditions, literal enforcement of the provisions of this ordinance would not result in an unnecessary hardship on the petitioner.
- c. The unnecessary hardship, which the petitioner seeks to avoid, would be imposed by action of the petitioner and is based purely for monetary gain or loss.

- d. The granting of the requested variance will alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based.
- e. Relief from the provisions of this ordinance is not the least relief necessary to remove the unnecessary hardship.
- f. That nonconforming use of neighboring lands, structures or buildings in the same district, and permitted use of lands, structures or buildings in an adjacent district did not form the grounds for the application of this variance request.
- g. That the hardship that will be suffered by the petitioner of the subject property if the dimensional variance is not granted does not amount to more than a mere inconvenience.

This decision must be recorded in the Land Evidence Records in the Town Clerk's Office. (Please note that the appeal period (20 days) begins when this decision is recorded and posted with the Town Clerk's Office).

Sincerely,



Lise J. Gescheidt, Chair
Tiverton Zoning Board of Review

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Tiverton, R.I.
NANCY L. MELLO TOWN CLERK
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