

STATE OF RHODE ISLAND
NEWPORT S.C.

ZONING BOARD OF REVIEW
TOWN OF TIVERTON

IN RE: VARIANCE PETITION OF GALE FAIRWEATHER AND LAKE STAFFORD ACRES,
INC. 10 THIBAULT LANE, TIVERTON, RI, PLAT 210, LOT 111-10.

DECISION

This matter came before the Town of Tiverton Zoning Board of Review (the "Board") for a duly noticed and advertised hearing on October 2, 2019 on the petition of Gale Fairweather, Lake Stafford Acres, Inc. (the "petitioner") requesting a variance to Article I Section 4.a, Article VIII Section 3.d (1), and Article V Sections 1, and 2b, and Article VIII Section 3a, of the Tiverton Zoning Ordinance in order to replace an existing deck with a 240 square foot deck on the water side of the property, a 36 square foot deck on the south side of the property and a 240 square foot shed to the south of the house structure located at 10 Thibault Lane, Tiverton, RI, being Plat 210, Lot 111-10 on the Tiverton Tax Assessor's maps. The property is located in an R-60 zoning district and constitutes a pre-existing non-conforming use of 14 residential cottages on a 10.9 acre parcel of leased land owned by Lake Stafford Acres, Inc. The property is in the Watershed Protection Overlay District.

HEARING

Attorney Peter Ruggiero appeared before the Board with his client Ms. Fairweather. Present for the Board were Chairwoman Lise Gescheidt, Mr. John Jackson, Mr. George Alzaibak, Ms. Wendy Taylor-Humphrey, Ms. Jennifer Hilton first alternate voting on this petition for the absent Mr. David Collins, and Mr. Joel Bishop second alternate.

Mr. Ruggiero introduced himself and Ms. Fairweather along with Mr. Bill Smith from Civil Engineering Concepts.¹ Mr. Ruggiero explained that this petition is in support of a rehabilitation project of an existing dwelling along Stafford Pond and there is some improvements proposed which require relief. Mr. Ruggiero noted that the Planning Board had addressed a lot of the environmental issues and have added some conditions to which the petitioner does not object. The Chairwoman stated the board is in receipt of the reports from the town's consultants Steere Engineering, the Conservation Committee, Planning Board and DEM.

Ms. Taylor-Humphrey noted in the advisory opinion from the Planning Board it indicates that the applicant shall provide a letter to the Zoning Board from the Stone Bridge Fire District endorsing this petition and there was no such letter in the packet. Mr. Smith responded that he notified Stone Bridge Fire District of this project and they had no issues with it. As a condition of approval, Mr. Smith agreed to obtain a letter from Stone Bridge. Both Ms. Taylor-Humphrey and Mr. Alzaibak indicated that in light of the Planning Board's decision, they would like an actual letter.

Mr. Smith was sworn in and subsequently gave a quick summary of the project. Mr. Smith stated the structure in question is owned by Ms. Fairweather and the land is leased and owned by Lake Stafford Acres. Because there are no internal lot lines for each of the residences setbacks are taken from the property boundary. The existing septic system used to be a cesspool and was recently converted to an advanced treatment bottomless sand filter and relocated much further away from the pond than the old cesspool which was right off the corner of the structure.

¹ Prior to beginning the petitioner's presentation, the Chairwoman noted that this petition had been on the September 4, 2019 Zoning Board agenda, but the Environmental Review Statement and the Planning Board's advisory decision had not been received by the Zoning Board prior to that meeting. As such, Mr. Ruggiero had requested and been granted a continuance.

Mr. Smith further testified that some renovation was done inside the building and part of that renovation included removal of an existing deck on the water side of the structure. Mr. Smith informed the board that Ms. Fairweather didn't realize that by voluntary demolition or removal required that any new work conform to current zoning. Mr. Smith also further stated the petitioner would like to add a small deck on the front or the easterly entrance to the property.

Mr. Smith stated the petitioner is asking for the ability to construct a shed approximately 137 feet from the pond. The purpose of the shed is to store a lawn mower and seasonal furniture. Due to the high water table of the property, a basement or a crawl space is prohibited. Mr. Smith also stated there is no attic on the property which limits availability to use space. Mr. Smith added the shed would keep debris under control, keep it undercover, and keep it more neat and conducive to the neighbors.

Mr. Smith stated Ms. Fairweather indicated to the Planning Board that she would be agreeable to providing some additional plantings along the top of bank to provide some additional habitats and help keep some of the activity a little further from the pond. The Chairwoman asked where the proposed plantings are going and Mr. Smith responded not all the way to the deck but approximately halfway so they would be along the top of bank.

Mr. Alzaibak asked Mr. Smith how many residences are on that property and Mr. Smith responded there are fourteen. The Chairwoman asked if there were any questions for Mr. Smith from the public and there were none.

At this time, Ms. Fairweather was sworn and generally explained her intentions with property. Ms. Fairweather stated she purchased this property in 2017 and has been improving it ever since. Ms. Fairweather explained she would like to expand the deck a little more so she can

have a table and chairs and a grill. The deck that was there was 10 x 10 and was pretty small. By the time you open the door, there really wasn't any room to put anything. Ms. Fairweather also explained the new deck is not going any closer to the water. Ms. Fairweather informed the board she would like a platform to walk onto at the entrance of the house rather than the stairs that are there now which are quite difficult to maneuver in and out just with a couple of small steps. Ms. Fairweather added that the shed is basically for storage as the house has no attic or basement. The Chairwoman asked Ms. Fairweather if she is planning on making this house her full-time residence and Ms. Fairweather replied that eventually she wants to move to this property permanently.

With no further questions from the board or the public, the board started deliberations.

DELIBERATION AND FINDINGS

Ms. Hilton stated she saw no problem with this as there were so many steps that Ms. Fairweather has already taken with DEM and the environmental aspect of the project and in securing a positive Planning Board recommendation and not everyone is going to do that for a deck. Mr. Jackson also stated he had no problem with this as Ms. Fairweather has gone through all the steps necessary and she hasn't tried to hide anything. Mr. Jackson went on to say two engineering firms have looked at this project and they had no concerns. The Chairwoman commented that the Planning Board heard this and made certain findings of fact that were addressed by the petitioner.

The Chairwoman asked how the board felt about the letter from Stone Bridge which was suggested as a condition. Ms. Taylor-Humphrey stated she feels like the Planning Board did a lot

of work on this as well as so many other companies that got involved, but because they did so, they obviously took a close view and suggested the board encourage the petitioner to abide by the recommendations of the Planning Board. Mr. Alzaibak made a motion to accept the letter from Stone Bridge just as a necessary endorsement if there is no opposition. Mr. Jackson seconded. The vote was unanimous. Voting were: Chairwoman Ms. Gescheidt, Mr. John Jackson, Mr. George Alzaibak, Ms. Wendy Taylor-Humphrey and Ms. Jennifer Hilton.

Thereupon the Chairwoman proposed the following findings 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 Petitioner has presented evidence that it wishes to enlarge a previous existing deck that is 240 feet and within a 200 pound radius of Stafford Pond. The petitioner also wishes to add a front deck which is basically a small entranceway and not something that's designed for furniture or an extended recreational area. The petitioner has also requested the addition of a shed for the storage of lawn furniture and other machinery to maintain the property.
2. That the Petitioner has secured favorable recommendations from the Tiverton Conservation Commission and the Planning Board which has made a recommendation to approve this with certain conditions.
3. That the Petitioner has taken very diligent steps in improving this property and installing an upgraded sand filter system that is further away from Stafford Pond.
4. That the Petitioner and the Petitioner's engineer has incorporated the report and recommendations of the Town's Consulting Engineer, Steere Engineering into their plans for this project.
5. There is no evidence that granting this petition is any threat to the watershed district or would negatively impact any environmental wellbeing of the pond or any of its neighbor or community.

Based upon the foregoing, the Chairwoman moved to GRANT the requested application for zoning variances as follows:

1. 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 land at issue here consists of a pre-existing non-conforming use of fourteen residential cottages on one parcel of almost 11 acres. The cottages are very old predating RIDEM and our Ordinance setback requirements including the land that is being leased by Ms. Fairweather.
2. 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 in that there are no environmental concerns about the property but the lack of a basement limits the amount of storage available on the property. Enlargement of the deck allows the owner to utilize the area for recreation in lieu of spilling out into the lawn and up against the pond.
3. 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 property has been in existence prior to Zoning restrictions by the Town and RIDEM for environmental setbacks and the requested relief is intended to allow the Petitioner to make use of the property as a full time residence without causing environmental harm, while complying with the state building code relative to access.
4. That granting of the variance will not affect the general character of surrounding areas as portrayed by the photographs that were submitted by the petitioner.
5. That the granting of this variance represents the least variance required to remove the hardship in that the proposed variances are the minimum needed to provide for reasonable use of the dwelling and to protect the pond.
6. 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.
7. That the hardship suffered by this owner would amount to more than a mere inconvenience if the variance was not granted.
8. Granting this petition is consistent with the Comprehensive Plan that we have in Tiverton.

Mr. Alzaibak seconded the motion. The vote was unanimous. Voting were: Chairwoman Ms.

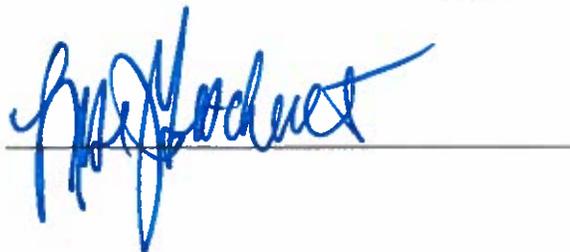
Gescheidt, Mr. John Jackson, Mr. George Alzaibak, Ms. Wendy Taylor-Humphrey and Ms.

Jennifer Hilton.

ACCORDINGLY, THE PETITIONER'S VARIANCE REQUESTS WERE GRANTED.

Entered as the official decision of the Tiverton Zoning Board of Review on this 9th day of

December, 2019.



Lise J. Gescheidt, Esq. - Chair

CERTIFICATION

I, Julio Berrett, 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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Tiverton, R.I.
NANCY L. MELLO TOWN CLERK
Dec 31, 2019 09:30A