

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

APPLICANT: David K. Aguiar, 60 Brookwood Drive, Westport, MA
PROPERTY OWNER: Same as applicant
PROPERTY: 239 Pelletier Lane
PLAT MAP 208 LOT: 117-106
PRESENT ZONING: R-60 Stafford Pond, Watershed Protection Overlay District
PRESENT USE: Single Family Home

RELIEF REQUESTED:

The applicant proposes to replace an existing residential dwelling with a newer more structurally sound structure that is able to accommodate the applicant's child who is confined to a motorized wheelchair.

The Tiverton Zoning Code, Article VIII, Section 3d(1) prohibits development within 200 feet of Stafford Pond. The new proposed structure will be 184 feet from the Pond at the northeast corner and will meet all other dimensional setbacks. Under the Tiverton Zoning Code, the relief requested necessitates a Use Variance. See Article VIII, Section 3d(1).

In addition, the Applicant seeks relief from Article VIII, 3d(3), which limits total impervious lot coverage to 10%. The applicant proposes coverage of 1,219 square feet or 14.86%. The applicant notes the current pre-existing impervious area is 1,276 square feet.

The Zoning Board received comments concerning the request at a legally noticed hearing held on January 8, 2020.

Zoning Board members present: Chairwoman Gescheidt and members Collins, Jackson, Taylor-Humphrey, Alzaibak, and 1st Alternate Hilton.

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

The following materials were entered into the record:

A Tiverton Zoning Board Application dated 8.27.2019.

Updated Soil Erosion Plan as revised 12.13.2019.

Condominium Plan prepared by Stapoco, Inc. (Sheets 1 and 7 of 16).

National Floor Hazard Layer Firmette.

Letter of Introduction to the Tiverton Zoning Board by the applicant (2 pages with two pictures of existing structure on the property; architectural drawing showing (4) elevations and internal floor plans of proposed structure).

Tiverton Conservation Commission Environmental Impact Review Statement dated 10.31.2019 with Supplemental Information for Environmental Impact Statement.

Stapoco Inc. Condo Unit Owner's Association letter dated 11.11.2019.

RI DEM System Suitability Determination Application Residential (Approval) 11.21.19.

Environmental Review Statement prepared by Mount Hope Engineering Inc. dated 9.12.2019.

Letter from Tiverton/Building Official dated 8.20.19 outlining need for zoning relief prior to issuance of building permits.

The applicant testified that the property was purchased in 2017, and is currently the residence of his older son, Joshua. The dwelling is actually a 1950's era trailer with two older wooden attachments. While the applicant intended to repair the property, the structure is in too bad of condition for feasible repairs. His younger son, who is wheelchair bound, is unable to visit or stay with his older brother because the floor structure is too weak and deteriorated to support the motorized wheelchair.

The applicant plans to raze and replace the current structure with a custom designed two-bedroom modular home. The home will be one story and will have 1040 square feet of living area with a single 54 square foot porch for a total area footprint of 1094 square feet. The proposal is to move the new structure an additional 6 feet from the pond than the current structure. However, the zoning code requires 200 feet of distance from the pond. The plans show a 184 feet distance, therefore the relief sought for the use variance is 16 feet.

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.

The 1950's structure has outlasted its useful life, and is beyond repair. In addition, the applicant has as child who has special needs who mobilizes with the use of a 54" powered wheel chair that requires an open floor plan and enhanced structural supports that are incapable of being devised in light of the age and condition of the existing structure.

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 applicant testified that the property was purchased by him in October 2017. Repairs were attempted, but the condition of the home was too far gone and too difficult for him to make the structure useable as a residential home. The difficulty is compounded by the applicant's need to have a stable, secure, and open floor plan to accommodate one of his children who needs a power

wheelchair. Therefore, the Board finds that the relief sought is not the result of any prior action of the applicant and that he is motivated to accommodate the needs of one of his sons to allow visitation and sleep-overs in the two bedroom home.

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.

The movement of the replacement house will actually make the structure more conforming to the required distance from the pond at 184 feet and the total square footage of the impervious structure will be less than the existing structure that will be removed. Therefore, the Board finds that the applicant is seeking the least relief necessary.

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.

This standard directly relates to the lot coverage which, as proposed, is less than the current structure (1,219 square feet vs. 1,276 square feet). This finding is supported by the 10.31.2019 Memorandum of the Tiverton Conservation Commission in which it finds support in favor of the increased distance from the pond and the decrease in the impervious surface areas.

Finally, to grant a USE VARIANCE, the BOARD must find that the structure cannot yield any beneficial use if it required to conform to the provisions of the zoning ordinance.

The Board accepts the applicant's representations that the structure is beyond repair and long past its useful life. The only feasible way for the applicant to garner any beneficial use of the property and to accommodate the special needs of one his children is to demolish the structure which will reflect modern building codes and a vast improvement to what currently exists. This finding is supported by the photographs submitted by the applicant and the proposed floor plans of the new structure.

Based on the findings of fact as stated above, and applying those facts to the legal standards necessary for a USE and DIMENSIONAL VARIANCE, a motion was made to GRANT both requests by Chairwoman Gescheidt, seconded by Mr. Collins.

A roll call was taken and the following members voted AYE TO APPROVE the relief sought: Gescheidt, Collins, Jackson, Humphrey, and Alzaibak.

The official minutes of the meeting of January 8, 2020 are also incorporated by reference into this decision of the Tiverton Zoning Board.

Decision Approved and Accepted this 5th of February, 2020.


Ms. Gescheidt, Chair

CERTIFICATION

I Julie Bennett, certify that I sent a true copy of the within decision, by regular mail, postage prepaid, to the applicant on the 5th day of February, 2020.

RECEIVED FOR RECORD
Tiverton, R.I.
NANCY L. MELLO TOWN CLERK
Feb 05, 2020 02:29P