

STATE OF RHODE ISLAND
NEWPORT S.C.

ZONING BOARD OF REVIEW
TOWN OF TIVERTON

IN RE: VARIANCE PETITION OF DAVID DURFEE AND ROSALIE DURFEE FOR 416
SEAPOWET AVENUE, TIVERTON, RI, PLAT 702, LOT 106.

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 David Durfee and Rosalie Durfee, (the "petitioner") requesting a variance to Article V Sections 1, and Article VI, Section 1, of the Tiverton Zoning Ordinance in order to complete a subdivision of the property located at 416 Seapowet Avenue, Tiverton, RI, being Plat 702, Lot 106 on the Tiverton Tax Assessor's maps. The property is located in an R-80 zoning district and currently consists of one single family dwelling and multiple accessory structures on a 24 acre parcel. The Petitioner seeks to obtain a variance to Article V Section 1, to be permitted to subdivide the property where the setback of a previously existing barn would be located 32 feet from a property sideline where the ordinance calls for a 35 foot setback and from Article VI, Section 1, which requires that accessory structures not have a footprint larger 864 feet where each of the previously existing barns is approximately 2400sf and 1500sf. It is proposed that the current parcel be subdivided into two lots of approximately 12 acres each with a new single family dwelling and the 2400 sq accessory building located on the newly created Lot 1, and the existing dwelling and outbuildings to be located on the resulting Lot 2. The subdivision has received preliminary approval from the Planning Board, conditioned, in part, upon securing the instant variances.

HEARING

Attorney Rochelle Green appeared before the Board representing the petitioner. 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.

Attorney Green presented her clients application explaining that two structures that are being addressed are nonconforming preexisting uses and buildings in existence since approximately the year 2000. Attorney Green then introduced William Smith P.E. from Civil Engineering Concepts to describe the relief requested. The Chairwoman recognized Mr. Smith as an expert.

Mr. Smith was sworn and stated Mr. Durfee owns approximately 24 acres of land on Seapowet Avenue. There's an existing residence on the property and there are accessory structures. There are some barns that are used for agricultural purposes. Mr. Smith further stated the Petitioner asked the Planning Board to be allowed to split the property into two parcels keeping the existing house for one of Mr. Durfee's children to live in and creating the other lot for his son. Mr. Smith went on to say there is an existing barn that's approximately 32 feet from the westerly quarter of the Durfee property and there is also another barn on the property.

Mr. Smith testified that the Planning Board asked that this petition come for Zoning relief because the parcel is located in an R80 zone. Typically the side yard setback for R80 is 35 feet and the currently existing set back is at 32 feet. Mr. Smith stated when the barn was constructed, it was an R60 zone. A 30 foot setback complied with the zoning at the time that it was

constructed but now a new side yard setback is applied toward that existing barn. Mr. Smith further stated there's been some recent changes to the zoning code which addresses accessory structures and it's allowed an accessory structure within 5 feet of a property line provided that an accessory structure cannot exceed 864 square feet. Mr. Smith noted this barn is bigger than that at approximately 2,400 square feet. The other barn on the property is approximately 1,500 square feet. The Petitioner seeks to subdivide the property for an extra lot for his son.

Mr. Smith commented that the Petitioner has gone to DEM and got the septic system approved for the proposed single family home. Mr. Smith further commented that CRMC scrutinized this application because the land could potentially be an archeological site. An archeological study was done with no significant findings

Mr. Smith stated that when these two accessory structures were constructed, they were in compliance with the zoning ordinance at the time. In response to questioning, Mr. Smith testified that he doesn't there has ever been a change in use since the buildings were constructed and that the petitioner is not proposing any additions to the barns that would increase the nonconformance.

Mr. Durfee was sworn in and stated that Mr. Smith's explanation accurately described what relief he was seeking. Mr. Durfee testified that he can't say exactly when the barn was constructed but it would be within a year or two of 1995. He testified that markings in the cement floor of the garage read 2000 but that the garage was built at least a year after that. He noted that both of those structures are being used today in the same way to support his agricultural and farming operations. With no further questions from the board or the public, the board started deliberations.

DELIBERATION AND FINDINGS

All testimony, questioning, and public comment having concluded, the Board entered deliberations on this matter. Mr. Alzaibak and Mr. Jackson both indicated their support for the project.

Thereupon Ms. Hilton proposed the following findings and motion to GRANT the requested relief, 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 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 zoning changed from an R60 zone to an R80 zone which changed the side yard setback from something to 35 and then 864 square foot maximum size. \
2. That such relief will not 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 result in an unnecessary hardship to the applicant in that bringing the existing substandard building side yard setback into compliance will require physically removing the northern building 3 feet to the east, reducing its size by two thirds and reducing the size of the other barn by approximately half. This would certainly represent an unnecessary hardship to the applicant. Further that CRMC did grant approval for this project which is in furtherance of a determination that it is not contrary to public interest.
3. That the unnecessary hardship which an applicant seeks to avoid was not imposed by any prior action of the applicant, and is not motivated purely monetary gain or loss in that the structures on the parcel conform to the applicable zoning when they were constructed and predated the current zoning of 35 feet side yard and 864 square foot maximum size accessory building.
4. That the granting of the requested variance will not 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 in that the structures are existing and the character of the surrounding area will remain unchanged by granting the variance.
5. That in allowing relief from the provisions of this ordinance, the proposed relief is the least variance from the provisions needed to remove the unnecessary hardship in that the requested relief is the minimum required to allow the existing buildings to remain in place.

6. The variance requested is not based in any manner on the present nonconformance that exists on the adjacent properties in that the proposed variance requested is not based on any nonconformance on the adjacent properties. The request will allow the existing accessory structures that were constructed in accordance with zoning at the time of construction to remain.
7. The hardship suffered by the owner of the subject property shall amount to more than a mere inconvenience if the variance is not granted. The Planning Board's recommendation in its advisory opinion indicated its conditional preliminary plan approval subject to our zoning relief and denial of the relief would result in a total denial of the subdivision application.

Mr. Alzaibak seconded the motion. 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 12th day of December, 2019.



Lisa J. Gescheidt, Esq. - 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 12th day of December, 2019.

