

October 22, 2013

MPD Development, LLC  
c/o Michael Duckett  
95 Wampanoag Lane  
Tiverton, Rhode Island 02878

Re: Tiverton Zoning Board Relief: Plat 408; Lot 139

Dear Mr. Duckett:

The following is the decision on your Petition heard by the Zoning Board of Review (the "Board") on August 6, 2013, September 4, 2013 and October 2, 2013 for a request for a variance and a special use permit to enclose an existing trailer/dwelling (the "Proposal") pursuant to Article VIII, Section 4.b and Article XIV, Section 5.d of the Tiverton Zoning Ordinance ("Zoning Ordinance") closer to the front and side yard setbacks than permitted at property located at 19 Delano's Island, Tiverton, Rhode Island at Plat 408, Lot 139 (the "Premises") in an R80 zoning district.

After the testimony was completed at the public hearing for which due notice was given and a record kept, and after having viewed the premises and the surrounding area, 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 4,577 square feet of land area, more or less, in an R80 zoning district.
2. That the Premises is currently used as a residence consisting of one small dwelling comprised of a trailer attached to a wood framed addition. The Proposal requires the issuance of a special use permit and variance by the Board pursuant to Articles IV, VIII and XIV of the Zoning Ordinance.
3. That the petitioner desires to act on the Proposal by enclosing the existing trailer portion of the dwelling with a wood framed structure.
4. That the petitioner testified that the proposed alterations are necessary to undertake the Proposal.
5. That the petitioner presented no expert witnesses concerning the Proposal. The petition offered no testimony or evidence to show that the Proposal was compatible with the surrounding area and the environment, that the Proposal would not adversely affect surrounding property values or negatively effect the area, that the Proposal complied with building and/or fire codes, or that the Proposal would not have an adverse effect on traffic conditions in the area.
6. That no objections were presented by abutters at the public hearing on this petition for relief. However, the local Fire Marshall appeared and objected to the Proposal as it would present a fire hazard in his opinion.
8. That the Board discussed the evidence regarding the Proposal and determined that the petitioner failed to show that the proposed relief was the least relief necessary to allow for the Proposal, that the petition was based primarily on financial gain as the trailer/dwelling was presently offered for sale, that insufficient environmental and building safety information was provided to the Board regarding the potential impacts of the Proposal and that the petitioner failed to provide sufficient, relevant evidence to meet their burden

of proof as to the standards of review for the sought after relief. Other practical alternatives are possible to better comply with the zoning district requirements.

As to the special use permit, the Board made a motion to deny the sought after relief. After deliberations, the Board voted four in favor and one opposed to denying the petitioner's application for a special use permit, as follows:

- (1) The public convenience and welfare will not be served by allowing the establishment of the Proposal on the Premises.
- (2) The Proposal will be detrimental to the public health, safety, morals or welfare.
- (3) The Proposal will not be compatible with neighboring uses and will not adversely affect the general character of the area.
- (4) The Proposal will create a nuisance in the neighborhood, and will not hinder or endanger vehicular or pedestrian movement.
- (5) The Proposal is not compatible with the comprehensive community plan of the Town of Tiverton.

Based on the foregoing, the Board made a motion to deny the variance relief sought by the applicant. After deliberations, the Board voted four in favor and one opposed to grant the petitioner's application for variance relief, as follows:

- a. Special conditions and circumstances do not exist which are special and 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 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, has been imposed by any prior 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 and 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.

Your petitions are hereby denied by the Board. This decision will 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.

RECEIVED FOR RECORD  
Tiverton, R.I.  
NANCY L. MELLO TOWN CLERK  
Nov 04, 2013 10:11A