

September 17, 2014

Gregory Lach, Member
Lach Investments, LLC
2354 Main Road
Tiverton, Rhode Island 02878

Re: Tiverton Zoning Board Relief; Plat 310, Lot 152

Dear Mr. Lach:

The following is the decision on your petition heard by the Zoning Board of Review (the "Board") on September 3, 2014 for a variance from Article V, Section 1 of the Tiverton Zoning Ordinance to convert an existing garage to a mixed use building containing one residential unit and one commercial unit on property located at 2354 Main Road, Tiverton, Rhode Island, being Plat 310, Lot 152 (the "Premises"), closer to the side yard setback than is currently allowed in a General Commercial zone.

The petitioner appeared only through counsel and explained that relief was sought to convert the existing 250 sq. ft. garage into a 576 sq. ft. mixed use building, with the current side yard of 4.1 feet being kept from the existing building for the proposed building. When questioned by the Board, counsel indicated that the proposed building cannot be moved because it would change the character of the lot. This change in lot character was argued by counsel to be the hardship caused without the issuance of a variance. No live testimony or affidavits were offered from the petitioner or any expert. In fact, no evidence was presented, 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 13,989 square feet of land area, more or less, zoned General Commercial.
2. That the petitioner desires to construct a new mixed use building that is large in size and located in the required side yard setback.
3. That the petitioner failed to offer any testimony, including expert testimony, or other evidence at the hearing other than his submitted plans and application.
4. That counsel for petitioner only explained, since he could not testify, that the character of the lot would be changed without the sought set yard variance.

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 the non-conformity because the proposed building was larger than the existing building, resulting in a larger length and area of non-conforming side yard setback than is currently on the lot.
8. The Board did not find the petitioner's conclusions offered by counsel sufficient 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
Lise J. Gescheidt, Chair
Tiverton Zoning Board of Review

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Tiverton, R.I.
NANCY L. MELLO TOWN CLERK
Sep 22, 2014 09:40A