

TOWN OF TIVERTON  
ZONING BOARD OF REVIEW

**DECISION FOR DIMENSIONAL VARIANCE**

RE: A petition has been filed by Michael A. Kelly, Attorney for John & Marcy Scaduto, Trustees, of Bridgewater, MA requesting a dimensional variance pursuant to Article XIV Section 5.d. of the Tiverton Zoning Ordinance in order to maintain a constructed hardscaped patio to replace an existing nonconforming patio located at 24 Shore Road, Tiverton, R,I being Plat 806 Lots 154 & 158 on Tiverton Tax Assessor's maps in an R80 zoning district.

Property Owner: John & Marcy Scaduto, Trustees

Property Address: 24 Shore Road

For property located at Assessor's Plat 806 Lots 154 and 158 in Tiverton, Rhode Island in the following zoning district: R80

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This matter was heard before the Board at a public hearing on February 3, 2016, upon Applicant's request for a dimensional variance pursuant to Article XIV, Section 5.d of the Tiverton Zoning Ordinance in order to maintain a constructed hardscaped patio to replace an existing nonconforming patio located at 24 Shore Road, Tiverton, being Plat 806 Lots 154 & 158 ("Property") on Tiverton Tax Assessor's maps in an R80 zoning district.

The Applicant, John Scaduto ("Applicant") testified through his counsel that he purchased the property in 2014. At that time, the property had a deck with a railing, which had been permitted through a variance from the Zoning Board in 2002. Once he purchased the property, he began much-needed improvements and obtained the requisite building, electrical and plumbing permits for the work. With respect to constructing the hardscaped patio, the Applicant spoke with the Building and Zoning Officials prior to constructing the 18-inch high hardscaped patio to inquire as to whether he needed any relief or permits for the same. The

Applicant was advised that, so long as he kept the footings for the deck in place, he would not need any relief or permits.

During construction, one of the Town Building Inspectors arrived at the Property and reviewed the construction of the patio. The Building Inspector verified the location of the patio, with the deck frame still in place, and initialed a photo of the same. The photo was entered into the record as an Exhibit. After construction, the Applicant learned that there had been complaints from neighbors regarding his patio. He again inquired as to whether he needed relief or a permit and was advised that he was fine.

The Applicant testified as to the surrounding neighborhood, where numerous structures located on neighboring properties infringed upon side yard and other setbacks. Various photos were entered into the record as Exhibits showing the same.

The Board opened the matter up for public hearing in which the Chairwoman recognized that the Board had received numerous letters from neighboring property owners in favor of the application. Kimberly Waltz and Elaine Barboza of 18 and 19 Shore Road, testified through their counsel in opposition to the Application.

The Board then closed the public hearing and deliberated and began a discussion for the purpose of reaching a decision. The Chairwoman made a motion to grant the request for dimensional relief, approving the dimensional relief for the patio, and increasing lot coverage from 25% to 37%, as such are shown on the plan submitted to the Board. The Board made the following findings of fact:

- I. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area. The lot is an irregularly-shaped lot, which already contained a non-conforming structure.

- II. The hardship from which the Applicant seeks relief is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(16).
- III. 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 relied upon the opinions of the Town officials who asserted that he did not need any relief for the construction of the patio.
- IV. 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. The area is made up of small nonconforming lots which have structures in the requisite setbacks. The Board recognized, from viewing the Property, that there is no direct abutter to the structure at issue, as the structure abuts roads. Additionally, the patio does not obstruct any views. The structure does not inhibit the fire department from reaching other properties or structures. Neighbors have testified that the patio is a significant improvement to the area. Further, there was no evidence that this is not compatible to the Comprehensive Community Plan of the Town of Tiverton.
- V. That the relief to be granted is the least relief necessary and 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. The Applicant relied on advice and opinions of Town officials when constructing the patio that he did not need any relief. The patio replaced a deck at the Property.
- VI. This motion is based on evidence presented by the witnesses, the testimony presented and there is no contrary evidence to any of the testimony that was presented by the applicant.

This was seconded by Member Wendy Taylor-Humphrey. All in favor to approve this application.

Voting to Approve:	Ms. Gescheidt Mr. Collins Mr. Jackson Mr. Taylor Ms. Taylor-Humphrey
Voting to Deny:	None

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Date

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L. Gescheidt, Chairwoman