

May 7, 2014

Tiverton Yacht Club  
PO Box 54  
Tiverton, Rhode Island 02878

Re: Tiverton Building Official Appeal, Plat 303, Lot 136

The following is the decision on your petition heard and decided by the Tiverton Zoning Board of Review (hereinafter, the "Board") on April 2, 2014 appealing a decision letter by the Tiverton Building Official dated November 18, 2013 requiring the Tiverton Yacht Club ("TYC" or "Petitioner") to apply for a special use permit in order to install a 1500 gallon septic tank (the "Project") on property they own located at 58 Riverside Drive, Tiverton, Rhode Island, at Plat 303, Lot 136 (the "Premises") in a R40 district (the "Decision").

When sitting on an appeal from the Building Official, the Board may reverse or affirm wholly or partly and may modify the order, requirement, decision, or determination appealed from and may make any orders, requirements, decisions, or determinations that ought to be made, and to that end has the powers of the officer from whom the appeal was taken pursuant to Article XV, Section 3(a) of the Tiverton Zoning Ordinance.

After the presentation of the appeal and comments from supporters and objectors to the petition to the Board at the public hearing for which due notice was given and a record kept and consideration of the facts established and the legal arguments made by the petitioner and a neighbor, the Board found that the petitioner established by sufficient evidence that the Building Official's Decision was in error and should be overturned.

The Petitioner, through counsel, argued that the Building Official's Decision constituted error as replacing the failed septic tank was not an "installation" under Ordinance Article VI, Section 7. Petitioner presented expert testimony from Todd Chaplin, P.E. about the alteration permit ("Permit" entered as Ex. 3) granted by the Rhode Island Department of Environmental Management (RIDEM). Mr. Chapman testified that RIDEM approved the Project as an alteration of an existing system.

A neighbor testified that he was unable to find the Permit in the public records of RIDEM and made legal argument to the Board that the Board should continue the hearing so that he and other neighbors could have an opportunity to research it. Another neighbor testified to same effect. After consideration of the argument presented, the Board denied the neighbor's motion to continue the hearing since the Permit was a public record.

The Board found as a fact that the septic tank replacement is a repair to the existing system on the Premises. Further, the Board took notice that RIDEM classified the Project as an alteration and not an installation. The Board also took notice that

"installation" was not defined in the Ordinance section in question and was left to conclude, based on their knowledge and experience, that the proposed Project fell under the common definition of repair, rather than installation. Based on the foregoing findings of fact, the Board voted unanimously to overturn the Building Official's Decision and found the proposed Project to replace the septic tank on the Premises was a repair and alteration and not an installation requiring a special use permit under Ordinance Article VI, Section 7(b).

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 only after this decision is recorded and posted with the Town Clerk's Office).

Very truly yours,



Lise Gescheidt, Chair  
Tiverton Zoning Board of Review