

**TOWN OF TIVERTON ZONING BOARD OF REVIEW  
SITTING AS THE BOARD OF APPEALS**

**NORTHBOROUGH REALTY HOLDINGS, LLC**  
*Appellant*

v.

**ADMINISTRATIVE OFFICER FOR THE  
TIVERTON PLANNING BOARD,**  
*Respondent*

**DECISION OF THE TIVERTON ZONING BOARD OF REVIEW SITTING AS THE  
BOARD OF APPEALS**

This matter was heard by the Tiverton Zoning Planning Board of Appeals on Wednesday, November 18, 2020 on an appeal by the appellant, Northborough Realty Holdings Inc., (“Northborough”) from a decision of the Tiverton Town Planner & Administrative Office (“AO”) Jennifer Siciliano’s, denial of Northborough’s request that she exercise her authority to administratively approve what the appellant considers a minor modification to an approved Final Plan to a multi-unit condominium development located at 1000 Main Road – Assessors Plat 119, Lot 122.

The request for administrative approval centers around a modification of the scope and location of a stormwater management facility on the originally approved plan which was located below the surface to an above ground detention basin. The appellant claims that changes to the storm water management plan were necessitated by the Rhode Island Department of Environment Management. Ms. Siciliano, via a letter dated September 28, 2020, which is incorporated by reference as Exhibit A, denied the appellant’s request for administrative approval as a minor modification and referred the matter to the full Planning Board for a further proceedings.

A timely appeal of the AO’s decision filed by Northborough was taken pursuant to Section 23-79 of the Tiverton Code of Ordinances and heard before the Board on November 18, 2020.

Northborough asserts that approval of this modification should have been granted by the Planner as a matter of right under the Tiverton Land Development and Subdivision Regulations, as amended on November 5, 2019, at Article IX, Section 23-50(b) which states:

Minor changes, as defined in the local regulations to a land development or subdivision plan may be approved by the administrative officer and planning board chairman, whereupon a plan may be recorded. The changes may be authorized without additional public hearings, at the discretion of the administrative officer and planning board chairman. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting a recommendation from the ad hoc technical

review committee. Denial of the proposed changes(s) shall be referred to the planning board for review as a major change.

(Emphasis added).

The Appellant argues in its submissions that because Tiverton's regulations do not define "minor change," that Northborough may be subject to arbitrary and capricious decision making by the AO. While the Board accepts the appellant's statement that the Planning Board regulations do not presently define the term "minor change," it is clear from above cited provisions that even if it were defined, it is not mandatory that the Administrative Office automatically approve them as a matter of right. The plain language of Article IX, Section 23-50(b) clearly states that an administrative officer **may** approve a minor change but is not required to do so. The AO retains the discretionary right to refer even minor changes to the Planning Board for their review and input. That is exactly what occurred, and therefore it is irrelevant as the characterization of the change is either minor or major.

Nevertheless, it is clear from the AO's letter dated September 28, 2020 that she believed the "current regulations of the Tiverton Planning Board do not allow me to approve this modification as minor." A careful review of the record submission and her findings as set forth in the September 28, 2020 letter outline her reasons why she believed that the proposed modification of a stormwater retention pond from an underground facility to an above ground surface facility necessitated a further review by the full planning board.

At the hearing of this appeal, the Board also heard testimony and viewed maps which clearly evidenced a more intensive use and encroachment of a commercial lot on the project which would essentially become unusable for further potential development in the future if the "minor change" was approved administratively. The Board is cognizant of its legal duty when reviewing a decision of the administrative officer on matters subject to . . . regulation . . . to not substitute its own judgment for that of the administrative officer, but most consider the issue upon the findings and record . . ." Section 23-81. The AO's decision of September 28, 2020 contains sufficient factual reasons to support the AO's findings as to why the proposed modifications necessitated further input and review by the Tiverton Planning Board. Deference to that reasoning and her findings is therefore afforded to the AO by this Board based on the legal analysis as stated above.

Therefore, the decision of the AO referring this matter to the Tiverton Planning Board for further review of the stormwater management amendment is upheld and the appeal of the Northborough is **DENIED** by a vote of 4 to 1.

The complete set of the minutes of this Board dated November 18, 2020, and the additional discussions and findings therein are incorporated in full by this decision as if set forth fully within.

  
Ms. Lise Gescheidt, Chairwoman

Date: 1/5/21

### CERTIFICATION

I hereby certify that this document will be sent electronically to the parties identified below and or/paper copies will be sent to those, postage pre-paid, indicated as non-registered participants on this 5<sup>th</sup> day of January, 2007.

W. Mark Russo, Esq.  
Ferrucci Rucco P.C.  
55 Pine Street, 3<sup>rd</sup> Floor  
Providence, RI02903  
(mrusso@frlawri.com)



# EXHIBIT A

Tiverton Planning Department  
343 Highland Road • Tiverton, Rhode Island 02878  
(401) 816-5631



September 28, 2020

W. Mark Russo, Esq.  
Ferrucci Russo P.C.  
55 Pine Street  
Providence, RI 02903

RE: Northborough Realty Holdings, L.L.C - Recording Bayview Condominiums Final Plan

To Mr. Russo:

As the Administrative Officer of the Tiverton Planning Board, I consider the request to modify the Bayview Condominiums Final Plan approved by the Planning Board on June 3, 2008 to the "Stormwater Management Plan for Bayview Townhouses 994-1000 Main Road, Tiverton, RI" to be a major change. There are multiple reasons for this determination.

The previously designed underground stormwater facility from 2008 does not fulfill the current RI DEM requirements. Therefore, Northborough Realty Holdings, LLC (Northborough) submitted the revised "Stormwater Management Plan for Bayview Townhouses 994-1000 Main Road, Tiverton, RI" plan to RI DEM for approval in 2019 with above ground detention basins. RIDEM does not require that stormwater facilities be located underground, and so Northborough could have proposed a different plan to fulfill the current RI DEM requirements.

The Request for Administrative Approval Letter dated September 10, 2020 implies that RI DEM required Northborough to change the stormwater management facilities to above ground. "... RIDEM is now requiring that that [sic] the stormwater management facilities consist of an above-ground detention basin on the Commercial Lot." RIDEM still allows underground stormwater facilities. As recently as January 21, 2020, the Tiverton Planning Board approved a Master Plan for Advantage Self-Storage Facility which includes an underground stormwater facility.

Northborough could have submitted a stormwater management plan to RI DEM with fewer dwelling units (or some other configuration) on 1000 Main Road (Plat 119 Lot 121) that would handle stormwater within the parcel. The 2018 stormwater management plan redesign that Northborough proposed changed the system to above ground creating a detention pond that utilizes almost the complete parcel at 994 Main Road (Plat 119 Lot 122). It was not a "modification" required by RI DEM.

Northborough's proposed 2018 stormwater management plan redesign does not only change the way stormwater is treated, it renders parcel 994 Main Road (Plat 119 Lot 122) unusable for

commercial purpose in the foreseeable future. The 2018 redesign would necessitate a merger (an Administrative Subdivision) of 1000 Main Road (Plat 119 Lot 121) and 994 Main Road (Plat 119 Lot 122). 994 Main Road, which is zoned commercial, would become a stormwater detention area.

If the parcels are not merged and Bayview Condominiums is redesigned where the stormwater is treated onsite at 1000 Main Road (Plat 119 Lot 121), then it would allow 994 Main Road (Plat 119 Lot 122) to be developed into a pedestrian-friendly commercial area. This type of development was envisioned by the community in both the Tiverton Zoning Ordinance and the Tiverton Community Comprehensive Plan. The Tiverton Zoning Ordinance states that this area should be a commercial human-scaled corridor and the Comprehensive Plan clearly shows the 994 Main Road parcel as being commercial in the Future Land Use Map (Figure S-4).

The proposed changes might have an effect on the Planning Board's ability to make the appropriate findings necessary for approval for the major subdivision. In particular, (1)The proposed development is consistent with the town comprehensive plan and/or has satisfactorily addressed the issues where there may be inconsistencies; (2)The proposed development is in compliance with the standards and provisions of the town zoning ordinance.

Based on these facts, I do not believe that the current regulations of the Tiverton Planning Board allow me to approve this modification as minor. Therefore, this matter will be referred to the entire Planning Board for their review and comment consistent with the requirements of a major modification of a previously approved plan.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Jennifer Siciliano  
Town Planner  
Administrative Officer for the Tiverton Planning Board

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JOAN B. CHABOT TOWN CLERK  
Jan 05, 2021 01:52P

CC: Michael J. Marcello, Esq.  
Christopher Cotta, Interim Town Administrator  
Susan Gill, Tiverton Planning Board Chair  
William Moore, Building/Zoning Official