STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 17, 2013)

FRANCINE SOLDI	:	
	:	
v.	:	**C.A. No. PC 12-5106**
	:	
THOMAS KRAIG, in his capacity as Acting Chairman of the Town of Barrington Zoning Board of Review; MARK W. FREEL, in his capacity as a member of the Town of Barrington Zoning Board of Review; IAN RIDLON, in his capacity as a member of the Town of Barrington Zoning Board of Review; DAVID RIZZULO, in his capacity as a member of the Town of Barrington Zoning Board of Review; STEPHEN VENUTI, in his capacity as a member of the Town of Barrington Zoning Board of Review; PETER DENNEHY, in his capacity as a member of the Town of Barrington Zoning Board of Review; PAUL BLASBALG, in his capacity as a member of the Town of Barrington Zoning Board of Review; and DEAN M. HUFF, JR, in his capacity as the FINANCE DIRECTOR/TAX COLLECTOR of the Town of Barrington	:	

DECISION

CARNES, J. Before this Court is an appeal from a decision of the Town of Barrington Zoning Board of Review (Zoning Board), denying Francine Soldi's (Appellant) application for a dimensional variance to construct an addition to her home. Appellant filed this appeal against Thomas Kraig, Mark W. Freel, Ian Ridlon, David Rizzulo, Stephen Venuti, Peter Dennehy, and Paul Blasbalg, in their capacities as members of the Town of Barrington Zoning Board of Review and Dean M. Huff, Jr., in his capacity as the Finance Director and Tax Collector of the Town of Barrington (collectively Appellees). She seeks reversal of the Zoning Board's decision

denying her application. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth below, this Court affirms the Zoning Board's decision.

I

Facts and Travel

Appellant owns property located on Assessor's Plat 24, Lot 172, more commonly known as 27 Half Mile Road in Barrington, Rhode Island. The parcel measures 120,300 square feet and includes a 1972 square foot, five-bedroom house with about 4000 square feet of interior living space, 1375 square foot swimming pool, 1120 square foot patio, and 6870 square foot tennis court. Appellant's parents originally built the residence on the property in the 1960s, thirty-seven feet away from abutting wetlands. Since the passing of her mother, Appellant has maintained the residence while living in Italy with her husband and son.

Subsequent to the construction of the residence, the Town of Barrington passed zoning ordinances in 1994. These ordinances generally prohibit placing any building, structure, or sign within 100 feet of any wetlands, water body or stream.[1] Barrington, R.I., Zoning Ordinance § 185-22. Since the passage of these laws, the Appellant has decided to move back to Barrington from Italy and build a twenty by forty foot, two-story addition to the house. The addition would consist of a living room on the first floor done in the theme of a library to accommodate the family's sizeable collection of books. The second floor would house more books and would

[1] The Wetlands Overlay District:

> "consist[s] of coastal wetlands, defined as salt marshes bordering on tidal waters, and freshwater wetlands, defined as those areas of ½ acre or greater, that are inundated or saturated with surface and/or ground water at a frequency or duration sufficient to support . . . a prevalence of vegetation typically adapted for life in saturated soil conditions."

Barrington, R.I., Zoning Ordinance § 185-171 (1994).

contain a sitting area accessed from the master bedroom to provide a secondary living space for the family. According to the construction plans, the addition would also include a basement with a wine cellar and tasting room to provide a venue for the Appellant's wine hobby. The addition, the footprint of which equals 960 square feet and adds 1600 square feet of interior living space, would further encroach on the 100 foot wetlands setback by coming within about sixteen feet of the wetlands edge.

Pursuant to the town's wetlands zoning regulations, Appellant applied for relief under Barrington Ordinance § 185-22—the town's setback requirements from wetlands and water bodies—for the proposed addition to her home.[2] According to Barrington's application procedure for Wetlands Overlay Districts, all applications must first be submitted to the Barrington Conservation Commission (Conservation Commission), which reviews the application and submits a report and recommendation to the Zoning Board. Sec. 185-173(C). Upon review of Appellant's application, the Conservation Commission recommended the disapproval of the site plan because the addition was "not the least relief necessary." See Conservation Commission Review of Zoning Application, Application No. 3683 (July 18, 2012). The recommendation noted that "there is adequate space on the property for placing the addition further from the wetland boundaries, while still retaining the proposed storm water mitigation system." Id. Despite commending the proposed mitigation system, the Conservation Commission was concerned that the construction was too close to the wetlands and noted that past applications were denied for similar reasons.

[2] Section 185-22 states, in pertinent part: "Except as otherwise provided, no building, structure or sign may be located within 100 feet of any wetland, water body or stream, or within 200 feet in the case of flowing water bodies in excess of 10 feet in width as provided by the state Freshwater Wetlands Act . . . ."

Following the recommendation, the Zoning Board conducted public hearings on the application for relief from the wetlands setback on July 19, Aug. 7, and Sept. 20, 2012. The published notices and agenda for the Zoning Board advertised the Appellant's application as involving "dimensional relief for being within 100' of a wetlands/waterbody." Public Notice of Barrington Zoning Board of Appeals, EastBayRI, Sept. 5, 2012, http://www.eastbayri.com/legal-notices/barrington-zoning-board-of-appeals-thursday-september-20-2012. At the first hearing, Appellant's counsel objected to the Zoning Board's analyzing the application under the dimensional variance standards. Appellant's counsel argued that the Zoning Board should apply the special use permit pursuant §§ 185-22 and 185-173(A) rather than the dimensional variance standards because only the former standards apply to applications seeking to construct within 100 feet of wetlands. The Zoning Board disagreed and proceeded to apply the dimensional variance requirements.

After determining the applicable standard, the Zoning Board then heard testimony from three experts and the Appellant. First, Shawn Martin (Martin), a civil engineer, testified about the design of the project's storm water management system. (Hr'g Tr. at 15:22-16:15, July 19, 2012.) This system had two components: a rain garden and a stone trench. The rain garden collected runoff and improved infiltration of the runoff into the ground while at the same time allowing plants to take root. The stone trench addressed runoff from the tennis court. Collectively, this system controlled runoff for 2800 square feet even though the addition was only 960 square feet. Id. at 17:15-21. Martin testified that if the application was approved and the project constructed as planned, there would be less surface runoff entering the wetlands than the existing condition today. Id. at 19:23-20:3. He also testified that putting the addition in the

backyard would neither increase nor decrease the amount of water flowing into the wetlands. Id. at 25:3-18.

The Zoning Board then heard from Scott Rabideau (Rabideau), a biologist working for a private wetlands consulting firm in Harrisville, Rhode Island. Id. at 36:8-13. Rabideau delineated the freshwater wetlands on the property and evaluated the project for the Barrington Zoning Board and DEM application. At the hearing, he testified that the project would not cut natural vegetation, disturb the natural habitat, or impact the ability of the wetland to absorb groundwater. Id. at 40:21-24. Moreover, he explained that the project would improve water flows to the wetland by infiltrating water. He further testified that coniferous trees could be planted to help screen the impact of the house on the wildlife habitat, noting that "[w]ithout the addition, there is no obligation on the homeowner's part to put in that screening vegetation." (Hr'g Tr. at 42:10-13, July 19, 2012.) According to Rabideau, the project would effectively reduce the impact on the habitat by screening out sound, light, and other activity on the property.

Subsequently, Don Powers (Powers), an architect, testified about the design of the addition and alternative locations for the project. As to possible alternative locations, he testified as follows:

> ". . . [I]t's within the realm of physics and construction to locate the addition somewhere else. The logic of this floor plan, however, and of the way the site is organized currently suggest that it wants to be in this location primarily because the house is designed as, essentially, two layers with a public space to the front, and the semiprivate space is to the back: The breakfast room, the kitchen, the dining room. If you were to locate this anywhere but in that quadrant, you occlude the views of any of these public rooms, or these semipublic rooms to the main feature of the whole site, which is the backyard.
>
> So, you could certainly put this right here, and now you've landlocked both the dining room and the kitchen . . .
>
> You either have to take out the existing pool and terrace and rebuild that somewhere else, or decommission the whole use of the

> terrace itself which occupies the center of the plan, and in doing so, you've limited the views from all of the other views to the back of the house."

Id. at 62:13-64:19. Powers noted that although the house had a formal living room at the front, there was "no real casual family area anywhere else in the house." Id. at 64:16-23. In his opinion, the location of the addition was logical because "it is sited in probably the only quadrant of the plan that makes any sense without completely gutting the whole house and redoing it." Id. Powers further testified that he could design a six by thirty foot structure that could house all of the books, but that would not:

> "solve the issue of the reason for having the books anyway . . . [A]rchitecturally, there's plenty of justification for a space of that size, even if its only function for it is to be a two-story living room, a largish living room, but [the footprint], it's probably not twice what the existing living room is . . . [T]here are bigger living rooms in Barrington than this one even if that's the only function it has."

Id. at 86:14-87:1. In response to a question from a board member about whether Powers had thought about moving the pavilion to the tennis court area, Powers stated:

> "Well, that's a very nice architectural idea, and probably if I were designing it, I might consider that as a retreat on the site . . . It's more to the point of how this client intends to and wants to utilize their property, and it's a different condition all together if to utilize a family room, you go outside and walk across the site to get to it. Not to say that I wouldn't love doing that, but that was not what I was asked to do."

Id. at 73:1-20.

Lastly, the Appellant testified. When asked about the necessity of the additional space, the Appellant stated:

> "[W]e are used to housing our books in a specific place that would, as I said, protect them, and we really do not have a space like that in the house that we could even create. I mean, we can't use the living room and make it into a library, so I really think that it's

> necessary because, you know, this is a very important collection, and I don't know what we would do with it if we can't bring it to the house and have a place for it
> . . . .
> [N]ormally, you know, we would keep the collection where we try to spend the most time, and as I said, because our plans are that we will be spending more time in Rhode Island, we would like to have our collections with us."

(Hr'g Tr. at 83:10-84:15, July 19, 2012.) At the hearing, a board member also asked whether there was no casual space in the current residence and whether the sitting room, also referred to as a "breakfast nook," could qualify as a casual living space. Id. at 89:3-24. In response, the Appellant stated: "[Y]ou couldn't entertain anybody in that room . . . [T]here's a couch, a chair, and a small television . . . [I]t's not adequate for the kind of lifestyle that I have." Id. at 90:9-16.

On September 21, 2012, the Zoning Board voted five to zero to deny the application. In its decision, the Zoning Board first found that the Appellant failed to show that the alleged hardship, the need for a place to store the expansive book collection, was due to a unique characteristic of the land. Instead, the Zoning Board concluded that the hardship was self-created because the original house was built within close proximity to the wetlands, even though the construction was allowed by law at the time. Moreover, the Zoning Board found that the owner created her own hardship by using most of the "dry" land for the swimming pool, patio, and a tennis court. Second, the Zoning Board found the efforts to mitigate storm water runoff only allowed it to make a finding that granting the variance would not alter the general character of the surrounding area. Third, the Zoning Board concluded that the Appellant failed to show that the relief requested was the least necessary. The decision states that other alternatives existed for storing the Appellant's book collection, such as removing or relocating the patio and building the addition in its place. The Zoning Board noted that "most of the area of the addition was not even used for books, but for a two-story high atrium, a wine cellar, and a 'tasting table;'

leading to the finding that the addition could be much smaller and still contain all of the books." Finally, the Zoning Board found that the Appellant failed to show that the resulting hardship would be more than a mere inconvenience absent relief. The decision stated that the Appellant is already making reasonable use of the lot with the house, patio, pool, and tennis court. A denial would only lead the Appellant to find an alternative means to store her books, which according to the Zoning Board amounted to a mere inconvenience. Following this decision, the Appellant filed the instant, timely appeal.

II

Standard of Review

The Superior Court's review of a zoning board decision is governed by § 45-24-69(d), which provides that:

> "[t]he court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:
>
> (1) In violation of constitutional, statutory, or ordinance provisions;
> (2) In excess of the authority granted to the zoning board of review by statute or ordinance;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

When reviewing a decision of a zoning board, the trial justice "'must examine the entire record to determine whether "substantial" evidence exists to support the board's findings.'" Salve Regina College v. Zoning Bd. of Review of Newport, 594 A.2d 878, 880 (R.I. 1991)

(quoting DeStefano v. Zoning Bd. of Review of Warwick, 122 R.I. 241, 245, 405 A.2d 1167, 1170 (1979)). Rhode Island law defines "substantial evidence" as "'such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means [an] amount more than a scintilla but less than a preponderance.'" Lischio v. Zoning Bd. of Review of North Kingston, 818 A.2d 685, 690 n.5 (R.I. 2003) (quoting Caswell v. George Sherman Sand & Gravel Co., Inc., 424 A.2d 646, 647 (R.I. 1981)).

In conducting its review, the trial justice may "'not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact.'" Curran v. Church Cmty. Hous. Corp., 672 A.2d 453, 454 (R.I. 1996) (quoting § 45-24-69(d)). This deference is due, in part, to the fact "that a zoning board of review is presumed to have knowledge concerning those matters which are related to an effective administration of the zoning ordinance." Monforte v. Zoning Bd. of Review of East Providence, 93 R.I. 447, 449, 176 A.2d 726, 728 (1962). Nevertheless, an administrative decision may be vacated if it is clearly erroneous in view of the reliable, probative and substantial evidence contained in the whole record. Von Bernuth v. Zoning Bd. of Review of New Shoreham, 770 A.2d 396, 399 (R.I. 2001); see also Costa v. Registrar of Motor Vehicles, 543 A.2d 1307 (R.I. 1988); sec. 45-24-69(d).

III

Analysis

A

Issues on Appeal

On appeal, the Appellant first argues that the Zoning Board erroneously applied the dimensional variance standard rather than the special use permit standard, as required by §§ 185-

73 and 185-74. Additionally, the Appellant argues that the Zoning Board misapplied the standards for granting a dimensional variance by misconstruing the concepts of a "self-created hardship," "least necessary relief," and "mere inconvenience." First, the Appellant contends that the Zoning Board incorrectly concluded that the hardship was self-created because the house was built prior to the enactment of the wetland zoning restrictions. Second, relying on Perry v. Town of Burrillville Zoning Bd. of Review, No. PC-2007-3323, 2012 WL 6215595 (R.I. Super. Dec. 6, 2012) (Trial Order), the Appellant maintains that "least relief necessary" requires the application of a reasonableness test. The Appellant argues that "the Zoning Board made no findings of fact on how the relief requested was unreasonably extensive with regard to the wetlands or the character of the surrounding area" and, therefore, the Zoning Board misapplied the "least necessary relief" standard. Third, the Appellant claims that the Zoning Board improperly applied the "no other reasonable alternative" standard rather than the less stringent standard of "mere inconvenience" as required by the Rhode Island Supreme Court. The Appellant states that "[s]imilar to what Shakespeare wrote about a rose by any other name; a 'no reasonable alternative' definition of 'mere inconvenience' by any other language is still illegal." (Appellant's Mem. 16). As such, the Board's finding on this requirement is based on an error of law and should be reversed." Id. The Appellant also argues that the Barrington Zoning Ordinance provisions regarding the wetlands overlay district are unconstitutionally vague because "there is a significant amount of ambiguity and vagueness in the Barrington Zoning Ordinance's treatment of wetlands." Id. at 17. Finally, the Appellant claims that the Zoning Board failed to make findings of fact on the special use permit, as required by §§ 185-173 and 185-174. The Appellant asks this Court to reverse the decision of the Barrington Zoning Board and requests attorney's fees and litigation expenses under the Equal Access to Justice Act.

B

Appropriate Standard for Relief

As an initial matter, this Court must determine whether the Zoning Board analyzed the application under the appropriate standard. Appellant claims that § 185-173 should control because it governs construction in the Wetlands Overlay District.[3] According to the Appellant, the plain language of the ordinance allows construction within 100 feet of wetlands by a special use permit. Section 185-22—which articulates the setback requirements for wetlands and water bodies—makes no mention of a dimensional variance requirement, Appellant explains, and this provision's silence cannot override the express language of §§ 185-173 and 185-174.

Appellant further claims that § 185-174 contains a patent ambiguity that should be strictly construed against the Town of Barrington. Specifically, Appellant argues § 185-173(A) allows construction within 100 feet of wetlands whereas § 185-174(A) states that "[a]ll new structures and expansions, paved areas and land disturbances will be set back at least 100 feet from the wetland edge." Appellant explained that granting a special use permit "to allow an applicant to build within 100 ft. of wetlands, only if they are not going to build within 100 ft. of wetlands . . . is what Joseph Heller would refer to as a Catch-22." (Appellant's Mem. 10.) According to the Appellant, the rules of construction require such alleged ambiguities to be construed in favor of the landowner. Therefore, the Appellant contends that the Zoning Board should have "discounted the illogical subsection (a) of § 185-174." Id.

[3] Section 185-173(A) states:

> "Any use that is not specifically prohibited in this Article or under any other applicable law or regulation, and which is allowed in the underlying zoning district, but meets the applicability requirements of § 185-169, is allowed in the Wetlands Overlay District, or within 100 feet thereof, only as a special use pursuant to the provisions of Article XIV of this chapter."

Finally, Appellant argues that applying the dimensional variance standard leads to results that are disconnected from the purposes of the Wetlands Overlay District, which include "the protection of wetlands, water resources and adjoining lands through control of activities impacting wetlands values, including . . . public or private water supply, groundwater resources, flood control, erosion, storm damage prevention, water pollution prevention, wildlife habitat and agricultural values." Sec. 185-170. According to the Appellant, expert testimony established that the project would actually have a positive impact on the wetlands. Therefore, the Appellant contends that "[w]hen the Zoning Board attached requirements to the Wetland Overlay District that in no way served the purpose of the district, it resembled a Kafkaesque self-perpetuating bureaucracy; gratuitously dispensing red tape merely because the tape is there to be dispensed." (Appellant's Mem. 13.)

In response, Appellees argue the Wetlands Overlay district ordinances require an application for a dimensional variance and a special use permit. Furthermore, the Appellees maintain that the Zoning Board properly considered the evidence based on the relief requested in the application under § 185-22. Because the Appellant never objected to the published notice, which stated that the Appellant sought a dimensional variance, nor sought leave to amend the application to request a special use permit, the Appellees contend that the Zoning Board properly considered the application for a dimensional variance. The Appellees further assert that § 185-33 requires dimensional relief for expansions of non-conforming structures. Because Appellant's home is allegedly a non-conforming structure, the Appellees note that the Appellant would need to comply with this provision regardless of the requirements of other sections of Barrington's zoning ordinances.

With respect to nonconforming structures, § 185-33(C) of the underlying zoning district regulations provides that:

> "[a] legal nonconforming structure shall not be enlarged or extended unless a dimensional variance is obtained pursuant to the provisions and standards set forth in Article XIII hereof. However, any enlargement or extension which otherwise complies in all respects with the provisions of this chapter as to setback, height and other spatial requirements shall not be deemed to be an extension or enlargement of a nonconforming structure."

Section 185-33(C). Section 185-5 defines a nonconformance as "[a] building, structure, or parcel of land, or use thereof, lawfully existing at the time of the adoption or amendment of this chapter and not in conformity with the provisions of this chapter or amendment." Sec. 185-5. In this case, the original house was built in the 1960s and predated the wetlands setback requirements. Therefore, the Appellant has a legal nonconforming structure under § 185-33(C). According to this provision, the Appellant may not enlarge or extend the nonconforming structure without obtaining a dimensional variance. This Court further notes that § 185-30, relating to existing nonconforming development, also states that "nonconforming structures shall not be enlarged unless a dimensional variance is obtained from the Zoning Board of Review." Therefore, the Appellant needed to obtain a dimensional variance in order to construct the addition. See § 185-33(C).

The Appellant argues that § 185-173(A), which lays out the application procedure for a special use permit in a wetlands overlay district, is the applicable provision. Section 185-173(A), states:

> "Any use that is not specifically prohibited in this Article or under any other applicable law or regulation, *and which is allowed in the underlying zoning district*, but meets the applicability requirements of §185-169, is allowed in the Wetlands Overlay District, or within 100 feet thereof, only as a special use pursuant to the provisions of Article XIV of this chapter."

Section 185-173 (emphasis added). Even if the Appellant needed to apply for a special use permit under § 185-173(A), she first needed to be in compliance with the underlying zoning district regulations, which required a dimensional variance. See § 185-33(C). Therefore, the Zoning Board correctly applied the dimensional variance requirements, and its decision did not constitute an abuse of discretion. Finding that the Zoning Board's application of the dimensional variance standard was not affected by error of law, this Court need not address the Appellant's argument regarding the Zoning Board's lack of findings on a special use permit.

C

Sufficient Evidence to Support the Zoning Board's Findings

Having found that the Zoning Board applied the correct standard, this Court must next determine whether there was sufficient evidence in the record to support its findings that the Appellant met the requirements for a dimensional variance. When reviewing a zoning board decision, the trial judge must find that the decision was supported by "substantial evidence," which is defined as "'such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means [an] amount more than a scintilla but less than a preponderance.'" Lischio, 818 A.2d at 690 n.5 (R.I. 2003) (quoting Caswell, 424 A.2d at 647).

Section 45-24-31(61)(ii) of the Rhode Island General Laws defines a dimensional variance as:

> "[p]ermission to depart from the dimensional requirements of a zoning ordinance, where the applicant for the requested relief has shown, by evidence upon the record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property unless granted the requested relief from the dimensional regulations. However, the fact that a use may be more profitable or that a structure may be more valuable after the relief is granted are not grounds for relief."

Section 45-24-31(61)(ii). Barrington Ordinance § 185-69 sets forth the four standards which an applicant must satisfy to obtain a variance. The ordinance states that:

> "[i]n granting either a use or dimensional variance, the Zoning Board of Review shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:
>
> A. That 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 and is not primarily due to a physical or economic disability of the applicant.
>
> B. 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.
>
> C. That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the Comprehensive Plan.
>
> D. That the relief to be granted is the least relief necessary."

In addition to these requirements, § 185-71 sets forth an additional requirement an applicant must meet to obtain a dimensional variance. This section states that:

> "[p]rior to the granting of a dimensional variance by the Zoning Board of Review, in addition to the standards of §185-69, the applicant has the burden of proving that the hardship to be suffered by the owner of the subject property shall amount to more than a mere inconvenience, which shall mean there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief."

Sec. 185-71; Lischio, 818 A.2d at 690.

With respect to the first element, Appellant argues that the Board wrongly applied the "self-created hardship" rule because the Appellant's house was built before the state and local wetland zoning restrictions were enacted. Therefore, the Appellant maintains that the Zoning

Board wrongly found that the hardship was not caused by a unique characteristic of the land. In response, the Appellees argue that the hardship is not due to the unique characteristics of the land because the Appellant allegedly testified that the hardship for her was personal and not environmental or topographical.

In this case, it is uncontroverted that the Appellant's house is within thirty-seven feet of the surrounding wetlands. Had the wetlands not existed, the Appellant would be free to construct the proposed addition. Therefore, the hardship is due to the unique characteristics of the land, namely that the property abuts protected wetlands.

To satisfy the second element, the Appellant must show that the hardship is not the result of any prior action on her part and does not result primarily from a desire to realize greater financial gain. Here, the Appellant conflates the first two prongs of the dimensional variance requirement. The Appellant claims that the Zoning Board improperly applied the self-created hardship rule as articulated in Sciacca v. Caruso when analyzing the "unique characteristic of the land" prong. In that case, the Supreme Court was actually analyzing the second prong: whether the hardship is 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. See Sciacca v. Caruso, 769 A.2d 578, 583 (R.I. 2001). The Supreme Court ruled that a self-created hardship "is most properly employed where one acts in violation of an ordinance and then applies for a variance to relieve the illegality." Id. at 584. In this case, there is no evidence indicating that the Appellant violated the Barrington Zoning Ordinance and is now applying for a variance to relieve the illegality. Rather, the house on the property is a legal nonconforming use.

With respect to the third element, the record shows that the addition will reduce the impact of the activity on the Appellant's lot on the wildlife habitat. (Hr'g Tr. at 42:4-17, July 19,

2012.) Specifically, Rabideau, the biologist, testified that vegetation, such as rhododendrons and coniferous tress, could be planted to "help screen the impacts from the house or the addition . . . Without the addition, there is no obligation on the homeowner's part to put in [the] screening." Id. The project would improve water flow to the wetlands by infiltrating it and would not impact the ability of the wetland to absorb water. Id. at 41:8-11. These facts also show that the project is compatible with the goals of the wetlands ordinance, which is to protect "wetlands, water resources and adjoining lands through control of activities impacting wetlands values, including . . . public or private water supply, groundwater resources, flood control, erosion control, storm damage prevention, water pollution prevention, wildlife habitat and agricultural values." See § 185-170. Therefore, the Zoning Board had before it probative evidence that the granting of the dimensional variance would not alter the general character of the surrounding area or impair the goals of the Wetlands Overlay District laws.

As to the fourth element, our Supreme Court has recognized that the least relief necessary is that which lessens the hardship which justifies the variance or, in other words, is "minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted." Standish Johnson Co. v. Zoning Bd. of Review of Pawtucket, 103 R.I. 487, 492, 238 A.2d 754, 757 (1968); see also Lincoln Plastic Products v. Zoning Bd. of Review of Lincoln, 104 R.I. 111, 114, 242 A.2d 301, 303 (1968) (reasoning that a board's "authority to act favorably is limited to the extent of relief demonstrated to be reasonably necessary to the enjoyment of the permitted use sought to be served"). Appellant argues that the Zoning Board made no findings of fact regarding how the relief requested was "unreasonably extensive with regard to the wetlands or the character of the surrounding area." The Appellees, however, claim that the Appellant failed to show that the proposed addition was the least necessary relief because she did not testify why

the books could not be stored elsewhere in Rhode Island, and the sheer size of the addition was disproportionate to the intended use. According to the Appellees, the addition could be built in place of the patio, which would not increase the overall footprint of the house and would require less relief than requested.

In this case, Powers, the architect, stated that the proposed addition would consist of a family room done in the theme of a library to house a collection of books and provide a secondary living space on the second floor adjacent to the master bedroom. The addition would also include a basement with a wine cellar and wine tasting room to provide a venue for the Appellant's wine hobby. Powers also testified that he could design a six by thirty foot structure that could house all of the books. (Hr'g Tr. at 86:14-87:1, July 19, 2012.) Moreover, Rabideau, a wetland scientist, testified that if the proposed addition were to take the place of the 1120 square foot outdoor patio or other existing amenities, then it would be fifty feet closer to the wetlands instead of sixteen feet. There is no evidence suggesting that a living room and wine cellar is the least necessary relief. In fact, the record shows that the house already has a formal living and a small, casual sitting room. As the Appellees stated, the Appellant did not testify as to why her books could not be stored elsewhere in Rhode Island. Therefore, the Board's finding that constructing a 960 square foot addition that would add 1,600 square feet of interior living space is not the least necessary relief is supported by substantial evidence in the record. See Standish Johnson Co., 103 R.I. at 492, 238 A.2d at 757.

Finally, the Appellant must show that the hardship she will suffer if relief is denied will be more than a mere inconvenience. Sec. 185-71; Lischio, 818 A.2d at 691. "When seeking a dimensional variance, an applicant bears the burden of demonstrating to the satisfaction of the zoning board that there is evidentiary support for the proposition that there are no reasonable

alternatives that allow the applicant to enjoy a legally permitted beneficial use of his or her property." Lischio, 818 A.2d at 693-94 (citing von Bernuth, 770 A.2d at 401). Appellant argues that "[s]toring rare books is a difficult task, and there are very exacting requirements for ensuring that the books are properly preserved, such as carefully monitoring the light, heat, and humidity of the environment where the books are kept." In support of this assertion, the Appellant cites to a 1993 publication by the National Park Service entitled "Conserve O Gram: Care and Security of Rare Books." In opposition, the Appellees argue that there is no evidence showing that the Appellant cannot make reasonable use of her property without the library, second living room, and wine cellar.

Here, the Zoning Board did not have before it evidence as to why storing the books at an offsite facility or on a section of the property further from the wetlands amounts to more than a mere inconvenience. Appellant stated: "[N]ormally . . . we would keep the collection where we try to spend the most time and . . . because our plans are that we will be spending more time in Rhode Island, we would like to have our collections with us." (Hr'g Tr. at 84:6-11, July 19, 2012.) Nothing indicates that Appellant could not keep her books at an offsite facility in Rhode Island or that Appellant has typically kept the books at her primary residence. She merely stated: "[W]e are used to housing our books in a specific place that would protect them and we really do not have a space like that in the house that we could even create." Id. at 83:10-84:15.

Moreover, Powers testified that there were possible alternative locations on the property to build the addition. The only reason given for using the particular location is that constructing the addition anywhere else on the property would occlude views from some of the rooms. Specifically, Powers said:

> "[T]he house is designed as two layers with a public space to the front and the semiprivate space is to the back: the breakfast room,

> the kitchen, the dining room. If you were to locate this anywhere else but in that quadrant, you occlude the views of any of these public rooms or these semipublic rooms to the main feature of the whole site, which is the backyard. So you could certainly put this right here, and now you've landlocked both the dining room and the kitchen."

Id. at 62:13-64:13. There was also no evidence presented showing that the Appellant cannot construct the library where the patio is located. Powers stated that building the addition on a different section of the property might entail taking out the existing pool and terrace and rebuilding that somewhere else, or decommissioning the terrace, which would limit views at the back of the house. Id. at 63:14-19. Therefore, the Zoning Board's finding that denying the application would not amount to more than a mere inconvenience is not arbitrary. See Von Bernuth, 770 A.2d at 401.

Furthermore, the Zoning Board did not have before it evidence that Appellant cannot make reasonable use of her property without a second living room or wine cellar. See Lischio, 818 A.2d at 693-94. In response to a question about why the Appellant needed another living room and why she could not use a sitting room already located in her house, she stated: "[Y]ou couldn't entertain anybody in that [sitting] room . . . [T]here's a couch, a chair, and a small television . . . [I]t's not adequate for the kind of lifestyle that I have." (Hr'g Tr. at 90:9-16, July 19, 2012.) Expert testimony at the hearing also established that a smaller addition was feasible. The architect testified that a six by thirty foot addition with retractable drawers could house the books. Id. at 86:14-87:1. Based on this testimony, this Court concludes that the Zoning Board's finding that the Appellant did not meet her burden in demonstrating that denial of the relief would constitute more than a mere inconvenience is supported by substantial evidence. See Lincoln Plastic Products, 104 R.I. at 114, 242 A.2d at 303 (denying variance relief when applicants established that they simply desired to construct "in a manner and place deemed by

them as best suited for their purposes" but did not demonstrate that it was necessary to the enjoyment of the land).

IV

Conclusion

After reviewing the entire record, this Court finds that the Zoning Board's application of the dimensional variance standards was not affected by error of law. This Court is also satisfied that the Zoning Board had competent evidence before it to deny the Appellant's request for a dimensional variance. Substantial rights of the Appellant have not been prejudiced. The decision was not in violation of constitutional, statutory, or ordinances provisions and was not clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record. Accordingly, this Court affirms the September 21, 2012 decision by the Zoning Board of Review of the Town of Barrington. Appellant's request for attorney's fees and litigation expenses is denied. Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Francine Soldi v. Thomas Kraig, et al.
CASE NO:	PC 12-5106
COURT:	Providence Superior Court
DATE DECISION FILED:	October 17, 2013
JUSTICE/MAGISTRATE:	Carnes, J.

ATTORNEYS:

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