STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: August 1, 2014)

RIMCO, LLC	:	
	:	
v.	:	**C.A. No. WC 10-0552**
	:	
THE ZONING BOARD OF REVIEW OF THE TOWN OF WESTERLY	:	

DECISION

MCGUIRL, J. Before this Court is an appeal from an order of the Zoning Board of Review of the Town of Westerly (Zoning Board) upholding an alleged zoning violation by Rimco, LLC (Appellant). Appellant seeks reversal of the Zoning Board's decision. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth below, this Court remands the case to the Zoning Board.

I

Facts and Travel

Appellant, a real estate holding company, owns property on Westerly Tax Assessor's Plat 23, also known as 2 Grills Lane. Ronald Mann and Carol Mann (the Manns), Appellant's owners, bought the property in August of 2001. (Hr'g Tr. 28:8-16, Feb. 3, 2010.) Following their purchase, the Manns made repairs to the building, including replacing the rotten wood support posts with new footings and lolly columns, fixing water and gas leaks, replacing the old heating system, and replacing the roof and shingles. (Zoning Bd. R., Ex. 10-9, Letter from Mr. Mann to Anthony Giordano, Zoning Official, Jan. 2, 2002.) The Manns did not add rooms to the existing building. (Hr'g Tr. 32:18-20, Feb. 3, 2010.)

On March 26, 2002, the Office of the Building Official of the Town of Westerly sent Mr. Mann a letter indicating that the office received numerous complaints regarding the property at 2 Grills Lane. (Zoning Bd. R., Ex. 10-13, Letter from Office of the Building Official of the Town of Westerly to Robert Mann, Mar. 26, 2002.) The letter did not specify the nature of the complaints but listed various documents describing the property. No notice regarding any zoning violation, however, was issued until 2009. (Hr'g Tr. 38:5-39:2, May 5, 2010; Zoning Board R., Ex. 10-20, Notice of Apparent Violation, Nov. 4, 2009)

On November 4, 2009, Mr. Mann received a "Notice of Apparent Violation" alleging that he was using the property at 2 Grills Lane for six dwelling units, in violation of Westerly Zoning Ordinances that prohibited multifamily dwellings with four or more units. (Zoning Board R., Ex. 10-20, Notice of Apparent Violation, Nov. 4, 2009). Following this letter, a zoning official and building official performed an inspection of the building. (Hr'g Tr. 15:14-17:8, Feb. 3, 2010; Zoning Board R., Ex. 10-21, Inspection Notes, Nov. 24, 2009.)

On November 24, 2009, Mr. Mann received a notice from the Town of Westerly entitled "Final Notice of Violation and Request for Voluntary Compliance Illegal Dwelling Units – 2 Grills Lane, AP 23, Lot 45, Westerly, RI." (Zoning Board R., Ex. 10-22, Final Notice of Violation, Nov. 24, 2009.) The letter alleged that the property on 2 Grills Lane was being used for six dwelling units, in violation of Westerly Zoning Ordinances that prohibited multifamily dwellings with four or more units. The Town of Westerly asked Mr. Mann to restore the building to its legal use as a three-family dwelling to avoid further enforcement action. Appellant appealed the zoning violation notice pursuant to § 45-24-64 and Westerly Zoning Ordinance § 260-38. Zoning Board R., Ex. 1, Application for Appeal; see § 45-24-64 ("An appeal to the zoning board of review from a decision of any other zoning enforcement agency or

officer may be taken by an aggrieved party."); Westerly Zoning Ordinance § 260-38 ("An appeal from any decision of an administrative official or agency or a board charged with the implementation of [chapter 260: Zoning] may be taken by an aggrieved party to the Zoning Board of Review."). The Zoning Board then held public hearings on February 3, 2010 and May 5, 2010 to address the issue of whether the building violated local zoning ordinances.

The parties presented conflicting evidence at the hearings regarding whether the building was a two, three, or multifamily dwelling. Prior to October 16, 1998, when the Town of Westerly changed the zoning designation for this property, the property was located in a Business (B2) zoning district. (Hr'g Tr. 55:8-21, May 5, 2010; Zoning Board R., Exs. 22-1 & 22-3, Assessor's Property Record Cards.) This district allowed multifamily dwellings—three or more dwelling units—as well as lodging and guest houses. Westerly, R.I. Zoning Regulations & Zoning Map Amendments, App. A, §§ 2-3 (1977). Two-family dwellings in B2 zones required a special use permit, and single-family detached dwellings were not allowed. Id. Property assessment cards indicate that the property was a one-family dwelling in 1981 and a three-family dwelling in 1994 in a B2 zone.[1] (Zoning Board R., Exs. 22-1 & 22-3, Assessor's Property Record Cards.) The Appellant, however, testified that prior to 1998, the property had been used as a two-unit dwelling with four rooms that were rented out to boarders. (Hr'g Tr. 30:6-17, 60:2-6, Feb. 3, 2010.) The Appellant also presented witnesses who testified that prior to 1998, rooms in the building had been rented out to boarders by the week. Id. at 44:6-45:2; Hr'g Tr. 11:19-12:10, May 5, 2010. Despite the Zoning Board's request, Appellant did not provide any factual

[1] It is not clear from the evidence why Property Record Cards describe the property differently. Although the hearing officer asked why the property description changed between 1980 and 1994, no answer was provided. (Hr'g Tr. 66:1-6, May 5, 2010.)

evidence in support of the testimony, such as cancelled checks verifying that the building was, in fact, being rented out to boarders. (Hr'g Tr. 61:10-62:6, 66:7-67:13, Feb. 3, 2010.)

Furthermore, according to the testimony of Elizabeth Rasmussen (Ms. Rasmussen), a Westerly zoning official, the property was a legal nonconforming use in 1981 because the first Town Hall record that she found for the property stated that it was a single-family dwelling. (Hr'g Tr. 57:21-58:6, May 5, 2010.) Ms. Rasmussen also testified that the 1994 assessor's card described the dwelling as three-family, but according to her research, the owners did not apply for a special use permit in the B2 zone to use the property as a multifamily dwelling. Id. at 65:16-20.

On October 16, 1998, the Town of Westerly changed the zoning designation for the property on 2 Grills Lane to a Neighborhood Business zone. Westerly R.I. Zoning Ordinance of 1998, 260k (1998) (Zoning District Use Tables). Neighborhood Business zoning districts allow single-family dwellings. Two- and three-family dwellings require a special use permit. Multifamily dwellings—defined as four or more units—and boarding and lodging houses are not allowed. A property record card dated October 15, 2001 stated that the building was a two-family dwelling located in a Neighborhood Business zoning district, but listed the occupancy as three. (Zoning Bd. R., Ex. 22-4, Assessor's Property Record Card.)[2] Property Record Cards from 2009 and 2010, however, indicated that the building was a three-family dwelling, listed the occupancy as three, but also stated that the building had six units, five bedrooms, and nine total rooms. (Zoning Board R., Exs. 22-15 & 22-17, Assessor's Property Record Cards.) Appellant,

[2] At the hearing, David Thompson, a senior field appraiser for the town assessors, was asked why the 2001 appraisal card stated that the dwelling is two-family, but the occupancy states three. (Hr'g Tr. 76:15-77:10, May 5, 2010.) He explained that, at the time, there was no category for three-family dwellings. Id. at 77:11-14. When it was pointed out that in 1994 the dwelling was listed as three-family, David Thompson stated that the occupancy was the more important description for purposes of determining the number of dwelling units. Id. at 78:8-17.

however, testified that the building is currently being used as a two-unit dwelling with four rooms rented out to boarders and presented witnesses stating that the building was being rented out to boarders.[3] (Hr'g Tr. 45:16-46:7; 48:1-17, Feb. 3, 2010; 112:6-19, May 5, 2010.) Ms. Rasmussen also testified that, according to her research, she did not find any applications requesting a special use permit for a three-family dwelling at the property in question. Id. at 68:11-18. Appellant also stipulated that it had never filed an application for a special use permit. Id. at 71:16-19.

Correspondence between public officials and the Manns also indicated confusion about the nature of the building. The Residential Sales Verification form for the property on 2 Grills Lane, dated December 17, 2001, indicates the dwelling type as "other" and states that the dwelling contains six units. (Zoning Board R., Ex. 10-6, Residential Sales Verification, Dec. 17, 2001.)[4] On August 24, 2001, Mr. Mann sent the Westerly Fire Department a letter indicating that "Assessor's Plat 23 will be used as a three family dwelling until a local fire alarm system is installed." (Zoning Board R., Ex. 10-3, Letter from Ronald Mann to the Westerly Fire Department, Aug. 24, 2001.) Several months later, Anthony Giordano (Mr. Giordano), a Westerly zoning official, wrote to Mr. Mann stating,

> "Notice is hereby given that I do not agree with your position of December 19th, 2001 that the structure on the above-described property may contain six apartment units. You were aware, as you admitted that the structure was sold to you and purchased by you as a three (3) family dwelling. Any attempt to re-configure or re-

[3] The property is currently zoned as a Neighborhood Business district, which allows single-family dwellings. Two- and three-family dwellings require a special use permit in this district and multifamily dwellings, as well as guesthouses and boarding and lodging houses, are not allowed.

[4] For purposes of this case, it is significant to note that the Residential Sales Verification form states six possible dwelling types—single-family, two-family, three-family, four-family, condominium, and other. (Zoning Board R., Ex. 10-6, Residential Sales Verification, Dec. 17, 2001.) The option checked off on the form is "other."

> structure the building in any way to use this structure as a six apartment dwelling well [sic] be considered a Zoning Violation and will be dealt with in that matter." (Zoning Board R., Ex. 10-8, Letter from Mr. Giordano to Mr. Mann, Dec. 20, 2001.)

Mr. Mann responded to this letter by stating:

> "[O]n August 29, 2001 . . . the Westerly fire department inspected and issued an approved fire marshal's inspection report for a six unit dwelling with the understanding that a local fire alarm system would be installed in the near future . . . . It is our contention that this property was constructed and used as a six unit for many, many years . . . Further, we know for a fact, that the property was used as a six family for over 20 years. We have not and do not intend to change the use of the property . . . ." (Zoning Board R., Ex. 10-9, Letter from Mr. Mann to Mr. Giordano, Jan. 2, 2002.)

In a subsequent letter to Mr. Giordano, Mr. Mann stated that the property was a two-unit dwelling and would not be changed without applying for the necessary permits. (Zoning Board R., Ex. 10-14, Letter from Mr. Mann to Anthony R. Giordano, Zoning Official, Mar. 28, 2002.)

On January 28, 2002, the Deputy State Fire Marshall responded to a complaint by Mr. Robert Broccolo that the property on 2 Grills Lane lacked an installed fire alarm system. (Zoning Board R., Ex. 10-10, Letter from Deputy State Fire Marshall to Robert Broccolo, Jan. 28, 2002.) The letter stated:

> "RIMCO, LLC [p]urchased this property [on] August 30, 2001 with sale recorded . . . as a two (2) family dwelling. This is according to the year 2000 town wide revaluation that was conducted. This purchase was from the previous owner, Mary Grills, who originally purchased the property . . . as a three (3) family dwelling. This information is according to the town wide revaluation records of year 1994." Id.

Finally, the Notices of Violation from the zoning officials from November 4, 2009 and November 24, 2009 state that the building contains six dwelling units. (Zoning Board R., Exs. 10-20 & 10-22, Notices of Violation.)

The Zoning Board voted to deny the appeal five to zero and upheld the zoning violation. The decision stated: "The following evidence presented at the public hearing clearly demonstrates the use of the building was originally a single-family dwelling since on or before 9/30/80 and then changed to a two, three or multi-family (4 or more units) dwelling after 9/30/1980 to the present time applied for or approved . . . ." (Zoning Bd. R., Ex. 23, Zoning Board's decision.) The decision then listed evidence submitted at the hearings—including assessor's Property Record Cards and correspondence between the Manns and city officials—and testimony by Mr. Mann, city officials, and current and former tenants of the property. Id. Following the Zoning Board's 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 states:

> "The 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 Coll. v. Zoning Bd. of Review of Newport, 594 A.2d 878, 880 (R.I. 1991) (internal quotation marks omitted). 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 Kingstown, 818 A.2d 685, 690 n.5 (R.I. 2003) (quoting Caswell v. George Sherman Sand & Gravel Co., 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.'" E. Bay Cmty. Dev. Corp. v. Zoning Bd. of Review of Barrington, 901 A.2d 1136, 1149 (R.I. 2006) (quoting Curran v. Church Cmty. Hous. Corp., 672 A.2d 453, 454 (R.I. 1996)). 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.'" Pawtucket Transfer Operations, LLC v. City of Pawtucket, 944 A.2d 855, 859 (R.I. 2008) (quoting Monforte v. Zoning Bd. of Review of E. 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. Iadevaia v. Town of Scituate Zoning Bd. of Review, 80 A.3d 864, 870 (R.I. 2013); see also § 45-24-69(d); Costa v. Registrar of Motor Vehicles, 543 A.2d 1307 (R.I. 1988).

III

Analysis

The Appellant first argues that the Zoning Board's decision does not contain findings of fact or conclusions of law. The Appellant also contends that the decision does not address its argument that the four units on the first floor are rooms rather than dwelling units and that the decision does not make credibility findings regarding any witness. In response, the Zoning Board argues that the decision contains the necessary findings and explanations to support its decision.

Section 45-24-61 requires zoning boards to include in their decisions all findings of fact. The Supreme Court has repeatedly stated that zoning boards must resolve evidentiary conflicts and "'make findings of fact and conclusions of law in support of its decisions in order that such decisions may be susceptible of judicial review.'" Bernuth v. Zoning Bd. of Review of New Shoreham, 770 A.2d 396, 401 (R.I. 2001) (quoting Cranston Print Works Co. v. City of Cranston, 684 A.2d 689, 691 (R.I. 1996)). The decision must provide "a judicial body [reviewing] a decision with a reasonable understanding of the manner in which evidentiary conflicts have been resolved and the provisions of the . . . [law] applied." Thorpe v. Zoning Bd. of Review of North Kingstown, 492 A.2d 1236, 1237 (R.I. 1985); see Sciacca v. Caruso, 769 A.2d 578, 585 (R.I. 2001). "'Those findings must, of course, be factual rather than conclusional, and the application of the legal principles must be something more than the recital of a litany. These are minimal requirements. Unless they are satisfied, a judicial review of a board's work is impossible.'" Sciacca, 769 A.2d at 585 (quoting Irish P'ship v. Rommel, 518 A.2d 356, 358-59 (R.I. 1986)); E. Greenwich Yacht Club v. Coastal Res. Mgmt. Council, 118 R.I. 559, 568, 376 A.2d 682, 687 (1977).

The Supreme Court has explained that "[t]hese requirements exist . . . because the parties as well as the court are entitled to know and should not be required to speculate on the basis for [an administrative] decision." Hooper v. Goldstein, 104 R.I. 32, 45, 241 A.2d 809, 816 (1968) (citing Coderre v. Zoning Bd. of Review of Pawtucket, 102 R.I. 327, 230 A.2d 247 (1967); Hopf v. Bd. of Review of Newport, 102 R.I. 275, 230 A.2d 420 (1967)). "[W]hen the zoning board fails to state findings of fact, the court will not search the record for supporting evidence or decide for itself what is proper in the circumstances." Kaveny v. Town of Cumberland Zoning Bd. of Review, 875 A.2d 1, 8 (R.I. 2005) (internal quotations omitted); see also Cullen v. Town Council of Lincoln, 850 A.2d 900, 904 (R.I. 2004) (internal quotations omitted) (stating that "[i]f a tribunal fails to disclose the basic findings upon which its ultimate findings are premised, [the court] will neither search the record for supporting evidence nor [decide for itself] what is proper in the circumstances.") In such circumstances, the court may remand the case for further proceedings. Sec. 45-23-71(c).

At the hearings, the Appellant raised two issues—whether four of the six rooms in the building constituted "dwelling units" as defined by Westerly's Zoning Ordinances and whether the current use constitutes a prior nonconforming use. As for the first issue, Westerly's Zoning Ordinances define a dwelling unit as "[a] structure or portion thereof providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress." Westerly Zoning Ordinance § 260-9(B). Therefore, the Zoning Board needed to make specific findings about whether each room complied with the requirements of § 260-9(B). See Sciacca, 769 A.2d at 585. The decision, however, omits any reference as to whether four of the six rooms in question were "rooms" or "dwelling units" within the meaning of Westerly's Zoning

Ordinances. See Kaveny, 875 A.2d at 8. The decision does not mention any of the evidence that was presented to help resolve the issue of whether the rooms in the building were "rooms" or "dwelling units." See Cranston Print Works Co., 684 A.2d at 691. Moreover, this Court will not search the record to find evidence supporting whether or not the rooms constituted "dwelling units" within the meaning of Westerly's Zoning Ordinances. See Kaveny, 875 A.2d at 8.

As for the second issue regarding prior nonconforming uses, Westerly Zoning Ordinance § 260-32(A) states:

> "[a]ny structure or the use of any structure or land which structure or use was lawful at the date of enactment of this Zoning Ordinance and which is nonconforming under the provisions of this Zoning Ordinance, or which will be made nonconforming by any subsequent amendment, may be continued subject to the following provisions."

The Westerly Zoning Ordinance further states that:

> "[a] nonconforming use may be changed only by special use permit, provided that such change shall more closely adheres [sic] to the intent and purposes of the Zoning Ordinance as provided in RIGL 45-24-40 entitled, "General Provisions – Alteration of Nonconforming Development". A nonconforming use may not be changed to a more intensive nonconforming use." Westerly Zoning Ordinance § 260-32(B)(2).

According to these provisions, the Zoning Board had to make specific findings regarding how the building was being used prior to October 16, 1998—the date the Westerly Zoning Ordinances were amended—and after this date in order to determine whether the use was nonconforming.[5] See §260-32(A). The decision, however, does not contain any clear findings to

[5] As the hearing was an appeal from a Notice of Violation of the building official of Westerly, the Appellant did not need to seek a declaratory judgment in Superior Court regarding whether the dwelling was a nonconforming use. See RICO Corp. v. Town of Exeter, 787 A.2d 1136, 1145 (R.I. 2001) (concluding that zoning boards can consider the existence of a nonconforming use on appeal, not on petition for a determination of a nonconforming use or on application for

allow this Court to discern how the building was being used. See JCM, LLC v. Town of Cumberland Zoning Bd. of Review, 889 A.2d 169, 176 (R.I. 2005) (explaining that "[a] satisfactory factual record is not an empty requirement" and that "[d]etailed and informed findings of fact are a precondition to meaningful administrative or judicial review"). Moreover, the evidence listed in the Zoning Board's decision is contradictory, and there is no indication in the decision that the Zoning Board resolved these evidentiary conflicts. See Bernuth, 770 A.2d at 401.

With regard to the building's use prior to October 19, 1998, the decision merely states: "The following evidence presented at the public hearing clearly demonstrates the use of the building was originally a single-family dwelling since on or before 9/30/80 and then changed to a two, three or multi-family (4 or more units) dwelling after 9/30/1980 to the present time applied for or approved . . . ." (Zoning Board R., Ex. 23, Zoning Board decision). In support of this statement, the decision then lists a 1981 Assessor's Property Record Card and states: "Occupancy '1 FAM' . . . Single Family Detached Dwelling Units are NOT permitted in the B-2 zone, subsequently, the use is non-conforming." The decision also lists a 1992 Rhode Island Department of Environmental Management Septic Repair Permit, which described the house as a duplex with three bedrooms. Id. The last piece of evidence in the decision regarding the building's use prior to 1998 is a 1994 Assessor's Property Record Card. Next to this Assessor's Property Record Card, the decision states: "Occupancy 'Three-fam' . . . Multi-Family Dwelling Units are permitted by Special Permit in the B-2 zone. There is no record of an application from Grills or any other person to convert from Single-Family to Three-Family." Id. However, the

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zoning relief); Olean v. Zoning Bd. of Review of Lincoln, 101 R.I. 50, 52, 220 A.2d 177, 178 (1966) (holding that zoning boards may assume the power to issue declaratory judgments).

Zoning Board failed to include any conclusion about how they decided how the property was being used in 1998. See Thorpe, 492 A.2d at 1237.

The decision also lists testimony from Mr. Mann, Jeffrey Yeater, and Joanne Satterlee, all three of whom contradicted the evidence above. Mr. Mann testified that the house had always been used as a two-dwelling unit with four rooms for lodging. (Hr'g Tr. 30:6-17, 60:2-6, Feb. 3, 2010.) The Appellant also presented witnesses who testified that, prior to 1998, the house had been rented out to boarders. (Hr'g Tr. 44:6-45:2, Feb. 3, 2010; 11:19-12:9, May 5, 2010.) Nothing in the decision indicates that the Zoning Board resolved these evidentiary conflicts, and this Court will not weigh the evidence. See Thorpe, 492 A.2d at 1237.

As for the building's use after October 19, 1998, the evidence listed in the decision is even more convoluted. The decision states that after September 30, 1980, the building was "a two, three or multi-family [dwelling] . . . ." (Zoning Board R., Ex. 23, Zoning Board decision). Whether the building was actually used as a two-, three-, or multifamily dwelling substantially changes the prior nonconforming use analysis in each scenario. See Westerly Zoning Ordinance § 260-32(A). To add to the confusion, the decision then lists evidence that inconsistently describes the building's use. Property record cards from 2000 and 2003 describe the building as three-family. The Residential Sales Verification describes the building as six units. (Zoning Board R., Ex. 10-6, Residential Sales Verification, Dec. 17, 2001.) Moreover, correspondence with government officials after the 1998 amendments describes the building as a two-family dwelling; two-family, five bedrooms; three-family dwelling; five-bedroom dwelling; six-dwelling unit; six-unit apartment. The most recent Assessor's Property Record Card listed in the decision from 2010 states that the occupancy was listed as three-family but the card notes six units. The decision then states that "[u]se of the dwelling for a three-family continues to be an

illegal, non-conforming use." (Zoning Board R., Ex. 23, Zoning Board decision.) Given that the Zoning Board made no findings of fact as to how the property was used prior to October 19, 1998, this Court fails to understand how the Zoning Board reached this conclusion. See Coderre, 102 R.I. at 328-29, 230 A.2d at 249.

Moreover, the decision lists testimony by Mr. Mann, Lisa O'Connor, and Judith Colprit that directly conflicts with the statement that the building is used as a three-family dwelling. (Hr'g Tr. 45:16-46:7; 48:1-17, Feb. 3, 2010; 112:6-19, May 5, 2010.) Nothing in the decision indicates that the Zoning Board resolved these evidentiary conflicts. See Thorpe, 492 A.2d at 1237. Moreover, this Court will not search the record nor will it weigh the evidence, which is the role of the Zoning Board. See JCM, LLC, 889 A.2d at 176; Bernuth, 770 A.2d at 401. Therefore, because the Zoning Board failed to make adequate findings of fact and conclusions of law regarding the prior nonconforming use issue, this Court cannot determine what evidence supported the Zoning Board's denial of the appeal. See Sciacca, 769 A.2d at 585. For these reasons, this Court concludes that the decision is also in violation of statutory provisions and an abuse of discretion. See Bernuth, 770 A.2d at 402. Finally, if the Zoning Board determines that the property was initially used as a one-family dwelling unit and subsequently changed that use, the Zoning Board should state in its decision whether or not the Appellant needed to apply for a special use permit and clearly explain its reasoning. See Westerly Zoning Ordinance § 260-32(A).

IV

Conclusion

After reviewing the entire record, this Court finds that the Zoning Board's decision did not contain sufficient findings of fact and conclusions of law to support its denial of the appeal.

The evidence was convoluted and contradictory, and the Zoning Board did not make specific findings in support of its conclusion. Other than a statement that the motion passed five to zero, no reasons were given for this denial of the appeal. This Court, therefore, vacates the Zoning Board's decision and remands the case for findings of fact and conclusions of law. On remand, the Zoning Board must clearly set forth its findings of fact and conclusions of law, referring to the evidence presented. The Zoning Board must confine its review to the existing facts and applicable law at the time of its initial decision. The Zoning Board shall render its decision within sixty days of this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Rimco, LLC v. The Zoning Board of Review of the Town of Westerly**
CASE NO:	**C.A. No. WC 10-552**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**August 1, 2014**
JUSTICE/MAGISTRATE:	**McGuirl, J.**
ATTORNEYS:	
For Plaintiff:	**Karen R. Ellsworth, Esq.**
For Defendant:	**John S. Payne, Esq.**