

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: July 5, 2016]

GIOVANNI STANZIALE and :
PRISCILLA STANZIALE, :
Plaintiffs, :

V. :

C.A. No. PC 2012-4210

TOWN OF JOHNSTON, JOHNSTON :
ZONING BOARD OF REVIEW, :
BERNARD FREZZA, ANTHONY :
PILOZZI, JOSEPH ANZELONE, :
RICHARD FASCIA, THOMAS :
LOPARDO, DENNIS CARDILLO, :
AL COLANNINO, BERNARD :
NASCENZI AND JOSEPH :
BALLIRANO, AS MEMBERS OF THE :
JOHNSTON BOARD OF REVIEW, :
AND BERNARD NASCENZI, IN HIS :
CAPACITY AS THE BUILDING AND :
ZONING OFFICIAL OF THE TOWN :
OF JOHNSTON, AND DOUGLAS :
MAGNESS AND BARBARA MAGNESS, :
Intervenors, :
Defendants. :

DECISION

CARNES, J. This matter is before the Court on Plaintiffs’ appeal of the August 1, 2012 decision rendered by the Town of Johnston Zoning Board of Review, upholding a Notice of Violation issued by the Town of Johnston Zoning Officer, citing Plaintiffs for violating § 340-25(C) of the Johnston Zoning Code. Plaintiffs seek reversal of the Zoning Board’s decision. Jurisdiction is pursuant to G.L. 1956 § 45-24-69.

I

Facts

A

History of the Dispute

Plaintiffs live at 61 King Street,¹ Johnston, Rhode Island comprising 10,890 square feet. Intervenor Douglas and Barbara Magness (Intervenor) live at 59 King Street, Johnston, Rhode Island and are adjacent neighbors to Plaintiffs.

This lengthy dispute started back on February 7, 2006, when Intervenor contacted the Johnston Police Department and filed a complaint concerning light pollution. (Johnston Police Report # 06-306-OF, Feb. 7, 2006.) Intervenor explained to the responding officers that Plaintiffs were in violation of the town ordinance because their Christmas lights prevented Mr. Magness from “getting total darkness in his den.” *Id.* Intervenor subsequently dropped their complaint.

In the summer of 2007, Intervenor filed a zoning ordinance violation complaint against Plaintiffs contending that Plaintiffs’ lights illuminated their property at night. In response, Johnston Field Inspector Peter A. Del Ponte (Mr. Del Ponte) inspected Plaintiffs’ property on July 19, 2007. (Field Inspector’s Report, July 19, 2007.) Mr. Del Ponte agreed with Intervenor that Plaintiffs were in violation of Johnston Zoning Ordinance² § 959 (currently § 340-25.1) and issued a Violation Notice dated July 30, 2007 requesting Plaintiffs remove the lights within 30 days or shield the lights from adjacent parcels. (Violation Notice, July 30, 2007.) In a letter dated August 27, 2007, Mr. Del Ponte explained he reinspected the property and concluded that

¹ Also referred to as Plat 14, Lot 282.

² The present code is available at <http://ecode360.com/JO1987>. The parties did not provide the ordinance in effect at the time of the violations.

Plaintiffs were still in violation of ordinance § 959. (Official Notice, Aug. 27, 2007). Mr. Del Ponte recognized the effort Plaintiffs made in trying to shield the light from adjacent properties but concluded it was not sufficient and ordered Plaintiffs to keep their lights off until they fixed the light to prevent it from shining on the neighbor's property. Id.

The Town of Johnston filed an action in Johnston Municipal Court against Giovanni Stanziale in CA No. 070911832. On January 2, 2008, Plaintiffs were issued a motion to appear at the Johnston Municipal Court on February 6, 2009. (Subpoena MC 11832, Jan. 2, 2008.) In an Order dated February 13, 2008, the Johnston Municipal Court dismissed the action pursuant to Rule 27A³ of the Rhode Island Traffic Tribunal Rules of Procedure (1999). (Order, Feb. 13, 2008.)

Thereafter, on April 21, 2010, Plaintiffs received a Notice of Violation asserting that Plaintiffs' trellis was an "accessory structure" located too close to the property line shared with Intervenor, in violation of Ordinance § 941(G)(7). (Violation Notice, Apr. 21, 2010.) The Notice of Violation requested Plaintiffs move the trellis within 14 days. Id. In a letter dated April 26, 2010, Plaintiffs agreed to remove the decorative lights from the trellis so that it would be classified as a vine support rather than an accessory structure. (Stanziale Letter, Apr. 26, 2010.)

Subsequently, Intervenor built their own trellis, which Plaintiffs claim is too close to the property line. (Stanziale Zoning Violation Compl., Aug. 23, 2010). Plaintiffs filed two zoning complaints—on August 23, 2010 and May 21, 2012—alleging that Intervenor's trellis violated the Town of Johnston Zoning Ordinance § 941(G)(7)(c) (currently § 340-25(C)) for accessory structures. Id.; Stanziale Zoning Violation Compl., May 21, 2012.

³ The rule defines the process of service and filing of papers.

Furthermore, on January 13, 2011, Plaintiffs received another Notice of Violation from the Zoning Officer, Mr. Nascenzi, contending that Plaintiffs replaced the decorative lighting on their trellis violating the April 26, 2010 agreement and § 941(6)(7)(c) (currently § 340-25(C)) for accessory structures. (Notice of Violation, Jan. 13, 2011.) Plaintiffs were given fourteen (14) days to remove the lights to come into compliance. Id. Additionally, Plaintiffs were required to appear at Johnston Municipal Court on February 23, 2011, which was continued to March 2, 2011, for violating the accessory structure ordinance in Johnston. (Town of Johnston Violation Notice, Feb. 3, 2011; Letter re: Violation # 1102041, Feb. 14, 2011.) At the March 2, 2011 hearing, the Municipal Court dismissed the action because of procedural deficiencies in the Violation Notice. (Zoning Bd. of Review Hearing Transcript (Tr.) 4:13; 4:17-22, July 17, 2012.)

Later, the Assistant Johnston Town Solicitor hosted a meeting on March 17, 2011 with respect to the disputed trellis, which included the Plaintiffs, Intervenors, their attorneys, and Mr. Del Ponte. At this point, Plaintiffs had erected a six-foot tall fence between their property and Intervenors' property. Tr. 7:8-13. Plaintiffs claim to have offered to build an eight-foot fence, but Intervenors declined. Tr. 7:8-19. At the meeting, the parties came to an agreement that Plaintiffs could display a single strand of blue LED lights on the trellis from dusk until 10:00 p.m. during the months of April to October. Tr. 25:1-11. Additionally, Plaintiffs agreed to shield or redirect any flood lights away from Intervenors' property. The Assistant Town Solicitor determined that the Intervenors were estopped from filing complaints in regards to Plaintiffs' trellis.

B

Present Dispute

Sometime after the March 17, 2011 meeting, Plaintiffs constructed a new trellis on their property. The original disputed trellis consisted of two posts and was made of PVC pipe. The newly constructed trellis increased to four posts and is made of wood. Plaintiffs contend that this new trellis is both in the same location and the same size as the original PVC pipe version; thus, it should be considered the same trellis. On the other hand, Intervenors contend that the structure is now affixed to the ground and has a lattice roof with lights. As such, Intervenors aver that the new trellis is much larger and in a new location and therefore should be considered a separate and new trellis.

On May 15, 2012, Mr. Nascenzi issued Plaintiffs a zoning violation because he determined the trellis to be a “structure” placed too close to the property line. The Town of Johnston Zoning Ordinance 941 § 340-25 states that structures cannot be placed less than five feet from an abutting property line. (Notice of Violation, May 15, 2012.) Plaintiffs were given 14 days to remedy the situation and notified of their right to appeal the violation. Id. In response, Plaintiffs sent the Zoning Officer a Notice of Appeal on May 23, 2012 in accordance with § 340-129(A) of the Johnston Zoning Code.

The appeal was scheduled to be heard before the Town of Johnston Zoning Board of Appeal (Zoning Board) on June 28, 2012, but was continued until July 17, 2012. The sole issue at the hearing was to determine whether the violation notice issued by Mr. Nascenzi on May 15, 2012 classifying the new trellis on Plaintiffs’ property as an accessory structure located too close to the property line was proper. Tr. 9:22-10:3; 18:4-13. The following people testified at the hearing: Plaintiffs’ attorney, Mr. Nascenzi, Mr. Del Ponte, Mr. Stanziale, Intervenors’ attorney,

the Town of Johnston City Solicitor, and Abutter Steven Finn (Mr. Finn). The Zoning Board also had before it multiple pictures of the three trellises referenced in the hearing.

At the hearing, Plaintiffs' counsel described the trellis at issue and reviewed the history of violation notices. Tr. 3:4-9:1. Specifically, Plaintiffs contend that the "new trellis" is merely made of wood, but is the same dimensions in width and height as the last trellis; thus, it is no different than the other trellis. Tr. 6:7-13. Plaintiffs' attorney contends that because this same trellis has already been subject to multiple violations that were litigated in Court and ultimately dismissed, the Town of Johnston should not be able to continue to object to the trellis. Id. at 23:4-12. Moreover, Plaintiffs argue that there is a due process problem with the Town of Johnston Ordinance not having a definition of accessory structure. Id.

Mr. Nascenzi explained that he determined that the new trellis is of different dimensions, is larger, made of wood, and consists of four legs rather than two, which makes it a completely separate trellis from the other violations. Tr. 8:19-9:9. He further testified that because of these characteristics, he determined the trellis to be an accessory structure that was not in conformance with the Zoning Ordinance requiring structures to be at least five feet from the property line. Id. at 11:17-12:4. Mr. Nascenzi additionally explained that although there is no definition for "accessory structure" in the Town of Johnston Zoning Ordinance, he used the separate definitions for "accessory" and "structure" to interpret the meaning of the Ordinance. Tr. 12:20-13:11; 14:20-15:9 (definition of structure and accessory). He also provided the definition of "fence" to the Zoning Board, but the Zoning Board and Mr. Nascenzi agreed the trellis cannot be considered a fence. Tr. 17:2-13.

Mr. Del Ponte, the Enforcement Officer⁴, agreed with Mr. Nascenzi that this new trellis was a separate and different one from the trellis involved in the previous dispute. Tr. 9:22-10:3. Mr. Del Ponte further opined that Plaintiffs' trellis became a structure when a roof was added. Id. at 21:23-22:14.

Mr. Stanziale also testified that he had filed a complaint against his neighbor for the same violation—having a trellis less than two feet from the property line. Tr. 13:24-14:2. The Zoning Board told Mr. Stanziale that this information was “irrelevant.” Tr. 14:3. Mr. Nascenzi responded stating that if the Intervenors improved their trellis to have four posts like Plaintiffs, he would also file a violation notice and bring them before the Zoning Board, but currently Intervenors are not violating any Town of Johnston Zoning Ordinance. Id. at 33:9-16.

Moreover, an attorney for the Intervenors also testified to correct what they believed were factual inaccuracies in the Plaintiffs' presentation⁴ by submitting photographs into evidence. Id. at 25:13-27:16. Another neighbor, Mr. Finn, also spoke at the meeting indicating that his son attends day care at Plaintiffs' property. He opined that the property is beautiful and the trellis acts as a fence. Id. at 33:17-35:5.

Ultimately, the Zoning Board agreed with Mr. Nascenzi and determined that the current trellis is considered a structure, which is in violation of § 941 because it is within five feet from the property line. Id. at 31:11-32:1; 35:12-16. The Zoning Board, through Mr. Pillozzi, explained that the trellis is more than just a garden feature, but that Plaintiffs actually built something with posts in the ground, supports, and a roof. Tr. 31:15-24. In light of those features, Mr. Pillozzi opined that the trellis is a structure, different from the single trellis

⁴ Peter A. Del Ponte is identified in the Administrative Records as a Field Inspector for the Town of Johnson. However, in the transcript of the July 17, 2012 Zoning Board of Review hearing, Mr. Del Ponte stated on the record that he was an Enforcement Officer.

complained of prior to this violation. Tr. 31:21-32:1. In contrast, Mr. Pilozzi explained that the Intervenor's trellis is not an accessory structure because it is just a single fence, not a double with flower pots, and it looks more like a fence. Tr. 32:16-33:5; 42:13-18.

The Zoning Board issued its decision on August 1, 2012, finding that the trellis at issue is a "structure" within the meaning of the Johnston Zoning Ordinance § 941, and thus, upheld the Zoning Official's violation. (Decision 2.) The decision states that the Zoning Board found that Mr. Nascenzi did not commit prejudicial, procedural error in his determination that the trellis was a structure. Id. The decision provided Plaintiffs with three options: 1) apply for a variance; 2) move the trellis to be five feet or more from the property line; or 3) take down the trellis. Id.

On August 16, 2012, Plaintiffs filed a timely appeal of the Zoning Board's decision to uphold Mr. Nascenzi's violation. Intervenor filed an opposition to Plaintiffs' appeal. The Town of Johnston also filed a memorandum in opposition to the Plaintiffs' appeal and adopted Intervenor's positions as their own.

II

Standard of Review

An aggrieved party may appeal the decision of a zoning board to the Superior Court. Cohen v. Duncan, 970 A.2d 550, 561 (R.I. 2009). The Superior Court reviews zoning board decisions pursuant to § 45-24-69(d), which provides:

"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.” Sec. 45-24-69(d).

Rather, “[i]t is the function of the Superior Court to ‘examine the whole record to determine whether the findings of the zoning board were supported by substantial evidence.’” Lloyd v. Zoning Bd. of Review for City of Newport, 62 A.3d 1078, 1083 (R.I. 2013) (quoting Apostolou v. Genovesi, 120 R.I. 501, 507, 388 A.2d 821, 824 (1978)). “Substantial evidence 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.’” Iadevaia v. Town of Scituate Zoning Bd. of Review, 80 A.3d 864, 870 (R.I. 2013). Moreover, “[t]he Superior Court gives deference to the findings of a local zoning board of review” because “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 East Providence, 93 R.I. 447, 449, 176 A.2d 726, 728 (1962) (internal quotation marks omitted)); Cohen, 970 A.2d at 561.

III

Analysis

Plaintiffs present two main arguments as to why the Zoning Board’s decision should be reversed. First, Plaintiffs assert that the Zoning Officer and Zoning Board should be barred by the doctrine of res judicata from enforcing the violation notices because the issue could have been raised in the earlier 2007 violations. Moreover, Plaintiffs contend that the Zoning Board’s

decision lacks substantial evidentiary support in the record, rendering the decision arbitrary and capricious and an abuse of discretion.

Intervenors assert that res judicata does not apply to the present action inasmuch as the issues are not the same as the 2007 violations because this trellis was built much later. Also, Intervenors argue that it is of no consequence that the Zoning Board did not define “accessory structure,” because the trellis is just a “structure,” and no structure can be built within five feet of a property line. Moreover, Intervenors aver the definition of structure is sufficiently clear, and there is ample evidence in the record to conclude that this trellis is a structure.

A

Res Judicata

Plaintiffs argue that res judicata should bar the Zoning Board’s enforcement because the issue of whether the trellis is an “accessory structure” could have been raised in the 2007 zoning violations. Additionally, Plaintiffs contend the dismissal from the Johnston Municipal Court was a final judgment.

Intervenors first argue there cannot be identity of issues because the trellis at the center of this present litigation was not constructed until March 17, 2011, is a different dimension, and was moved to a different location. Second, Intervenors argue that there is no finality of judgment because there were no adjudications on the merits in regards to this case. Intervenors also indicate that the dismissal from the Municipal Court was not with prejudice—thus, not rendering the within a final judgment on the merits. Therefore, Intervenors conclude res judicata is not a bar to the present suit.

Res judicata bars litigation when “there exists ‘identity of parties, identity of issues, and finality of judgment in an earlier action.’” Duffy v. Milder, 896 A.2d 27, 36 (R.I. 2006) (quoting Waters v. Magee, 877 A.2d 658, 666 (R.I. 2005)). In regards to whether there is identity of

parties, the Court must determine if the parties are the “same as or in privity with a party in the prior proceeding.” E.W. Audet & Sons, Inc. v. Firemen’s Fund Ins. Co. of Newark, N.J., 635 A.2d 1181, 1186 (R.I. 1994) (citing State v. Chase, 588 A.2d 120, 122 (R.I. 1991)). In determining whether there is identity of issues, the Rhode Island Supreme Court further analyzes “three factors: (1) the issue sought to be precluded must be identical to the issue determined in the earlier proceeding, (2) the issue must actually have been litigated in the prior proceeding, and (3) the issue must necessarily have been decided.” E.W. Audet & Sons, Inc., 635 A.2d at 1186. Our Supreme Court has adopted the transaction approach of the Restatement in regards to identity of issues, which “precludes the re-litigation of ‘all or any part of the transaction, or series of connected transactions, out of which the [first] action arose.’” Reynolds v. First NLC Fin. Servs., LLC, 81 A.3d 1111, 1116 (R.I. 2014) (quoting Lennon v. Dacommed Corp., 901 A.2d 582, 592 (R.I. 2006)).

Rhode Island has expanded the doctrine of res judicata to apply to zoning board decisions as well as civil cases “[b]ecause the proceeding before the zoning board of review involve[] an administrative agency acting in a quasi-judicial capacity.” Town of Richmond v. Wawaloam Reservation, Inc., 850 A.2d 924, 933-34 (R.I. 2004). The purpose of the doctrine is to conserve judicial resources by not duplicating the same lawsuit. Id. at 932 (citing ElGabri v. Lekas, 681 A.2d 271, 275 (R.I. 1996)). When res judicata applies, it “renders a previous judgment conclusive with respect to any claims or defenses that a party raised or could have raised in the previous proceeding.” Id.

In the present case, this Court finds that res judicata is not a bar to the present action. There is identity of parties because the same parties were involved in each action—the Town of Johnston sought to enforce the Town of Johnston Zoning Ordinance against the Stanziale family.

However, there is clearly no similar identity of issues. The prior 2007 litigation involved a trellis of two legs made of PVC pipe. In the present case, the trellis is made of wood, consists of four legs, and has a lattice roof, which was built subsequent to March 2011. See Tr. 21:12-15. As such, the issues were not identical in both proceedings. E.W. Audet & Sons, Inc., 635 A.2d at 1186. Moreover, there was no final judgment in regard to enforcement of the violation notices. There is no evidence that any previous violation was brought before a zoning board. Additionally, the parties did appear before the Johnston Municipal Court twice, but the cases were dismissed for procedural deficiencies by the Town of Johnston without prejudice, which is not an adjudication on the merits.⁵ Tr. 16:11-17. Thus, there also was no actual litigation or issues decided prior to the August 1, 2012 Zoning Board decision. See id. Therefore, because there is no identity of issues between the 2007 litigation and the present case, there can be no preclusive effect from the prior litigation.

B

Arbitrary and Capricious

Plaintiffs argue that even if this Court does not find that res judicata bars the present claims, the decision itself was arbitrary and capricious and lacks evidentiary support in the record. First, the Plaintiffs aver that the finding of fact utilized by the Zoning Board's decision, which relies completely on the Zoning Officer's testimony, was erroneous. Plaintiffs further contend that the Board was required to make findings of fact of their own as to whether this

⁵ There is no written order in evidence dismissing the case, and there is no indication that the dismissal was with prejudice. See Sch. Comm. of Town of N. Providence v. N. Providence Fed'n of Teachers, Local 920, Am. Fed'n of Teachers (AFL-CIO), 122 R.I. 105, 108, 404 A.2d 493, 495 (1979); ("Dismissal with prejudice, however, constitutes a full adjudication of the merits as if the order had been entered subsequent to trial."); Lennon, 901 A.2d at 593 (However, only a "voluntary dismissal with prejudice" has "preclusive effect.").

trellis was an accessory structure, but instead merely adopted the Zoning Officer's determination. Moreover, Plaintiffs aver that because the Town of Johnston Zoning Code does not contain a definition of "accessory structure," and the Zoning Board did determine what factors must be satisfied for a structure to be an "accessory structure," the Zoning Board exercised unfettered discretion. Thus, Plaintiffs argue that calling the trellis a "structure" because it had four posts is conclusory and not based on any discernible standard.

Intervenors contend that the Zoning Board's decision conforms to the Town of Johnston Zoning Ordinance and was amply supported by the substantial evidence in the record. Intervenors review the record and Zoning Ordinance and aver that § 340-25(C) provides that accessory structures cannot be placed within five feet of the lot line. Intervenors then point to the definitions of "accessory use" and "structure" to conclude that the trellis at issue is an accessory structure, even though the Zoning Ordinance does not specifically define "accessory structure." Moreover, Intervenors interpret § 340-25(C) to state that both "accessory structures" and "structures" are prohibited within five feet of the property line. Although Intervenors argue that the trellis is an accessory structure, they also argue at the very least it is still a structure that must be five feet away. Finally, Intervenors contend that the Zoning Board amply supported their decision with evidence in the record.

1

Support in the Record

In reviewing a Zoning Board decision, the Court must review the whole record and evaluate "whether the findings of the zoning board were supported by substantial evidence." Lloyd, 62 A.3d at 1083 (internal quotation omitted). Substantial evidence is "more than a scintilla but less than a preponderance." Iadevaia, 80 A.3d at 870. This standard has also been

described as meaning “more than merely ‘some’ or ‘any.’” Apostolou, 120 R.I. at 508, 388 A.2d at 824. “It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. This Court finds that the record contains substantial evidence to support the Zoning Board’s conclusion.

The issue presented before the Zoning Board was whether the Notice of Violation issued on May 15, 2012 by the Zoning Officer determining that the lighted trellis is an “accessory structure” and in violation of § 340-25(C) was proper. Tr. 3:6-10; 12:20-13:15. Section 340-25(C) provides:

“Accessory structures. A permitted accessory structure may be placed in a rear yard area, but may be placed no closer than five feet to a lot line. No accessory structure so placed within a rear yard shall exceed 15 feet in height. Any structure which exceeds the height limitation will require a variance from the Zoning Board. No accessory structure shall exceed 150 square feet.”

Mr. Nascenzi testified before the Zoning Board how he came to his conclusion that the trellis at issue on Plaintiffs’ property should be considered an accessory structure. He explained although the Zoning Ordinance at the time did not provide a definition for “accessory structure,” the Ordinance does provide definitions for “accessory use” and “structure.” Tr. 15:18-24. An “accessory” use is defined as “accessory to the primary dwelling, whether it’s used for ornamentation, whether it’s used as a storage shed, or whatever. . . .” Tr. 12:24-13:11. Furthermore, “structure” is defined as “[a] combination of materials to form a structure for use, occupancy, or, ornamentation whether installed on, above, or below the surface of land or water.” Tr. 14:20-15:9. Moreover, Mr. Nascenzi explained in comparison that a fence is defined as “a barrier, railing, or other upright structure, typically of wood or wire, enclosed area of ground to mark a boundary or control surrounding area vegetation.” Tr. 17:2-13. However, a trellis, according to the dictionary and not the Town of Johnston Zoning Ordinance, is “a

framework of light, wooden, or metal bars, chiefly used as a support for fruit trees or climbing plants.” Tr. 22:22-24.

Using these definitions provided by Mr. Nascenzi from the Zoning Ordinance, the Zoning Board sought opinions about whether Plaintiffs’ trellis is an accessory structure. See 2 Rathkopf’s The Law of Zoning and Planning § 33:22 (4th ed.) (definition of accessory structure). The Zoning Board was presented with photos of the structure to aid in their determination. Furthermore, Mr. Nascenzi testified he determined that the trellis’ dimensions, large size, wood construction, and consisting of four legs rather than two, made it an accessory structure rather than a fence. Tr. 8:19-9:9; 11:17-12:4. Mr. Del Ponte further opined that Plaintiffs’ trellis became a structure when a roof was added. Id. at 21:23-22:14. From the definitions, testimony of Mr. Nascenzi and Mr. Del Ponte, and the picture evidence, the Zoning Board concluded that the trellis at issue is an accessory structure.

The Zoning Board had before it definitions, pictures, and zoning officials to help aid in its determination of whether this trellis should be considered an accessory structure. Cf. Apostolou, 120 R.I. at 509, 388 A.2d at 826 (“record is barren of ‘some’ or ‘any’ evidence to support the board’s findings” thus the decision was not supported by substantial evidence). Because the Zoning Board had before it multiple pieces of evidence to support the conclusion that the trellis in question is an accessory structure, its findings are supported by substantial evidence and is not clearly erroneous.

2

Relying on Zoning Official’s Testimony

Plaintiffs also challenge the Zoning Board’s reliance on the Zoning Official’s testimony. As a Zoning Board “is presumed to have knowledge concerning those matters which are related

to an effective administration of the zoning ordinance,” the Superior Court traditionally gives deference to their findings. Pawtucket Transfer Operations, LLC, 944 A.2d at 859 (citing Monforte, 93 R.I. at 449, 176 A.2d at 728; § 45–24–69(d). For this reason, the Court also extends deference to the determinations of the Zoning Official, but not “blind deference.” See New England Expedition-Providence, LLC v. City of Providence, 773 A.2d 259, 263 (R.I. 2001). Moreover, the Zoning Board is entitled to rely on the opinion of its own zoning enforcement officer. Mill Realty Assocs. v. Crowe, 841 A.2d 668, 675 (R.I. 2004) (“As it was entitled to do, the board elected to rely on the testimony of the zoning enforcement officer.”).

In the present case, the Zoning Board clearly used the testimony of Mr. Nascenzi and Mr. Del Ponte to reach their decision on whether the trellis in question is an accessory structure. See Mill Realty Assocs., 841 A.2d at 675 (Court found it permissible that the zoning board relied on the testimony of the zoning official in making their decision). Additionally, the Zoning Board also questioned the basis of Mr. Nascenzi’s and Mr. Del Ponte’s opinions. See, e.g., Tr. 15:10-11 (suggesting the trellis might be considered a fence); Tr. 11:19 (questioning why a permit was not needed). Therefore, the Zoning Board’s adoption of the Zoning Official’s opinion was not in excess of their statutory authority or a violation of ordinance provisions because they are allowed to give his opinion deference; and, by questioning Mr. Nascenzi’s basis for his opinions, they did not give his opinion blind deference. See New England Expedition-Providence, LLC, 773 A.2d at 263.

Arbitrary Standard for Definition of Accessory Structure

The Court may utilize statutory construction to interpret a zoning ordinance. Cohen, 970 A.2d at 562 (“we equally apply the rules of statutory interpretation to the construction of a zoning ordinance.”). When a zoning board interprets its own ordinance, the Court gives weight to its opinion as long as it is not clearly erroneous. Id. “It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” Alessi v. Bowen Court Condo., 44 A.3d 736, 740 (R.I. 2012) (internal quotation omitted). In the event that the ordinance has no clear meaning, it should be interpreted broadly in favor of the land owner. See 1 Rathkopf’s The Law of Zoning and Planning § 5:11 (4th ed.).

In the Johnston Zoning Ordinance, although “accessory structure” is not defined, “accessory” and “structure” are defined. An accessory use is defined as “accessory to the primary dwelling, whether it’s used for ornamentation, whether it’s used as a storage shed, or whatever. . . .” Tr.12:24-13:11. Furthermore, “structure” is defined as “[a] combination of materials to form a structure for use, occupancy, or, ornamentation whether installed on, above, or below the surface of land or water.” Tr. 14:20-15:9. Using the definitions provided in the Zoning Ordinance itself, the meaning of “accessory structure” is clear and unambiguous; thus, the Zoning Board and this Court must apply its plain and ordinary meaning. See Alessi, 44 A.3d at 740. Moreover, because the Zoning Board’s interpretation is not clearly erroneous, this Court must give deference to their opinion. See Cohen, 970 A.2d at 562. As such, this Court finds the Zoning Board’s opinion that there existed an “accessory structure” is not clearly erroneous, arbitrary, or capricious.

IV

Conclusion

After review of the entire record, this Court upholds the decision of the Town of Johnston Zoning Board of Review's August 1, 2012 decision. The decision was not barred by res judicata because although Plaintiffs disputed a previous trellis, the structure at issue in this litigation is a new and separate structure; therefore, res judicata does not apply to any previous determination. Moreover, the Zoning Board's decision was not arbitrary and capricious or an abuse of discretion because the record contains reliable, probative, and substantial evidence for the Zoning Board's findings, including the opinion of the Town's zoning officials. Additionally, the Zoning Board's definition of "accessory structure" was not clearly erroneous. Substantial rights of the Plaintiffs have not been prejudiced. As such, this Court upholds the Zoning Board's decision.

Counsel shall submit an appropriate judgment for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Giovanni Stanziale, et al. v. Town of Johnston, Johnston Zoning Board of Review, et al.

CASE NO: PC 2012-4210

COURT: Providence County Superior Court

DATE DECISION FILED: July 5, 2016

JUSTICE/MAGISTRATE: Carnes, J.

ATTORNEYS:

For Plaintiff: Anthony J. Gianfrancesco, Esq.

For Defendant: Richard A. Sinapi, Esq.