

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

(FILED: April 1, 2016)

TEM CORP. and :
C&H PROPERTIES, LLC :
 :
vs. :
 :
TOWN OF EXETER ZONING :
BOARD OF REVIEW :
 :
and :
 :
JAMES POND REALTY COMPANY, :
LLC :
Formerly the Helen Danforth Trust :
(Intervenor) :

C.A. NO. WC-2015-0129

DECISION

MATOS, J. Before the Court is TEM Corp. and C&H Properties, LLC’s (collectively the Appellants) appeal from a decision of the Town of Exeter Zoning Board of Review (Zoning Board), which denied the Appellants’ application for a special use permit. The special use permit would have allowed Appellants to construct a two-parcel industrial park containing a bituminous concrete (asphalt) manufacturing plant on one of the lots and a contractor’s office and storage facility on the other lot. The Appellants seek reversal of the Zoning Board’s decision, reasonable litigation expenses, and attorney’s fees. Jurisdiction is pursuant to G.L. 1956 § 45-24-69. For the reasons set forth within, this Court affirms the Zoning Board’s decision.

I

Facts and Travel

C&H Properties, LLC (C&H) owns property located on Assessor's Plat 46, Block 2, Lot 3 in Exeter, Rhode Island (the Property). See Zoning Certificate. On November 19, 2014, C&H requested a zoning certificate from the Town of Exeter's Zoning Inspector seeking approval of the plan to build an asphalt plant within an industrial park.¹ See id.; see also Dec. 9, 2014 Zoning Application. The Zoning Inspector issued a certificate stating that the "proposed use, structure or sign . . . DOES NOT conform to the provisions of the Town of Exeter Zoning Ordinance." See Zoning Certificate. Accordingly, the Zoning Inspector informed Appellants that they needed to apply to the Zoning Board for a special use permit pursuant to Article II, § 2.4.1.59 of the Exeter Zoning Ordinance (Zoning Ordinance) and that the Appellants further needed to apply to the Town of Exeter's Planning Board (Planning Board) for a Development Plan Review. See Zoning Certificate.

On December 9, 2014, the Appellants applied to the Zoning Board for a special use permit to build a two-parcel industrial park on the Property, which would include an asphalt plant on lot A and a contractor's office and storage facility on lot B. (Dec. 9, 2014 Zoning Application.) The Appellants also applied to the Planning Board for a Development Plan Review and a major subdivision. See Hr'g Audio Tr. (Hr'g Tr.) 1:30-2:10. The Planning Board submitted a statement on the general consistency of the Appellants' application for an industrial park with the Town of Exeter's comprehensive plan in accordance with the Zoning Ordinance. Id.; see also Article I, § 1.1.3.E of the Zoning Ordinance.

¹ At the public hearing, Appellants' counsel stated that the term bituminous concrete manufacturing plant, which was used by the Appellants, is the "fancy phraseology of [sic] an asphalt plant." Hr'g Tr. 2:22-2:27.

On February 12, 2015, the Zoning Board held a public hearing on the Appellants' application for a special use permit. At the hearing, counsel represented the Appellants, and the Appellants presented testimony regarding the proposed industrial park. Michael McCormick, a professional land surveyor; Timothy Behan, a professional engineer; James Houle, a real estate professional; Thomas Miozzi; and the President/owner of TEM Corp. all testified on behalf of the Appellants at the hearing. No one testified in opposition to the Appellants' application.² The testimony at the public hearing addressed the conditions for granting a special use permit in Exeter, Rhode Island.³ See Hr'g Tr. 126:30-1:28:00, 138:00-140:10. The Zoning Board ultimately determined that an asphalt plant was specifically prohibited and thus not eligible for a special use permit. See Zoning Board Decision (Zoning Board Decision) at 5-6; Hr'g Tr. 138:00-140:10. Therefore, the Zoning Board did not reach the question of whether the Appellants satisfied the criteria for a special use permit. See Zoning Board Decision; Hr'g Tr. 138:00-140:10.

² However, at the hearing, a member of the Zoning Board noted that the notice of the hearing may not have been fully understood because nowhere in the notice did it clearly state that an asphalt plant would be put on the Property. Hr'g Tr. 1:14:00-1:15:15; 1:18:00-1:19:20.

³ The Zoning Board will use specified criteria to determine if it will issue a special use permit. An applicant will have to demonstrate to the satisfaction of the Zoning Board through the presentation of

“competent evidence that the proposed use and/or structure: 1. Will be compatible with the neighboring uses and will not adversely affect the surrounding neighbor's use and enjoyment of their property; 2. Will be environmentally compatible with neighboring properties and the protection of property values; 3. Will be compatible with the orderly growth and development of the Town of Exeter, and will not be environmentally detrimental therewith; 4. That the best practices and procedures to minimize the possibility of any adverse effects on neighboring property, the Town of Exeter, and the environment have been considered and will be employed where applicable including, but not limited to, considerations of soil erosion, water supply protection, stormwater runoff, wastewater disposal, wetland protection, traffic limitation, safety and circulation; and 5. That the purposes of this ordinance, and as set forth in the Exeter comprehensive plan, shall be served by said special use permit.” Article I, § 1.3.F.C. of the Zoning Ordinance.

The Zoning Board issued a written decision regarding the special use application on February 25, 2015. The Zoning Board Decision noted that Appellants' attorney argued at the hearing that Article II, § 2.4.1.59 of the Zoning Ordinance regarding industrial parks is vague and does not limit the type of industrial businesses that may operate within industrial parks, arguing that based on the current language of the Zoning Ordinance, "a landowner could operate any type of industrial business whatsoever in the Town of Exeter so long as that industrial business was located in an 'industrial park.'" (Zoning Board Decision at 4.)

The Zoning Board made nine findings of fact based on the record before it. See generally id. at 5. In relevant part, the Zoning Board found that the Appellants were seeking to obtain a special use permit in order to construct an industrial park on the Property, pursuant to Article II, § 2.4.1.59 of the Zoning Ordinance. Id. Further, the Appellants intended to subdivide the Property into two smaller lots that would share a common driveway. Id. On one side of the subdivided lot, the Appellants intended to construct an asphalt plant, and on the other lot, the Appellants intended to construct a contractor's office and storage facility. Id.

In turn, the Zoning Board made seven conclusions of law. See id. at 5-6. The Zoning Board determined that Article II, § 2.4.1.59 of the Zoning Ordinance is not vague or ambiguous. Id. at 5. It found that only uses permitted or specially permitted according to the Use Table are allowed in an industrial park in the Town of Exeter. Id. An asphalt plant, the Zoning Board found, is not a use listed in the Use Table. Therefore, it reasoned that an asphalt plant is a specifically prohibited use. Id. Furthermore, the Zoning Board concluded that an asphalt plant is specifically prohibited, according to the Zoning Ordinance, regardless of whether the asphalt plant is proposed to be located within an industrial park, even if the construction and operation of the asphalt plant would otherwise satisfy the criteria of a special use permit. Id. at 6. The

Zoning Board found that it does not have authority to issue a special use permit for a use that the Town Council has not included in the Use Table. Hence, it did not have authority to issue a special use permit to the Appellants. Id. Finally, the Zoning Board reasoned that the Town Council did not intend to allow the construction of asphalt plants in the Town of Exeter because it did not include the use within the Use Table. Id. The Zoning Board made no findings regarding whether the Appellants satisfied the criteria for a special use permit. See id.

The Appellants timely appealed the Zoning Board Decision. An abutting landowner, the James Pond Realty Company, LLC, formerly The Helen Danforth Trust, filed a motion and successfully joined this action as an intervenor requesting this Court uphold the Zoning Board's Decision. See Motion to Intervene.

II

Standard of Review

Pursuant to the Zoning Enabling Act, an aggrieved party may appeal to the Rhode Island Superior Court for review of a local zoning board's grant or denial of a special use permit. See § 45-24-69(a); Iadevaia v. Town of Scituate Zoning Bd. of Review, 80 A.3d 864, 869 (R.I. 2013). Section 45-24-69(d) provides that:

“(d) 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).

When reviewing a decision of a local zoning board, the Superior Court does not weigh evidence, but rather, it reviews the entire record to determine whether there exists substantial evidence to support the zoning board’s findings. See Pawtucket Transfer Operations, LLC v. City of Pawtucket, 944 A.2d 855, 859 (R.I. 2008) (citing OK Properties v. Zoning Board of Review of Warwick, 601 A.2d 953, 955 (R.I. 1992)); Mill Realty Assocs. v. Crowe, 841 A.2d 668, 672 (R.I. 2004). Substantial evidence is a term of art, which has been defined to mean more than a scintilla but less than a preponderance. Apostolou v. Genovesi, 120 R.I. 501, 508, 388 A.2d 821, 824-25 (1978) (internal citations omitted). Further, substantial evidence means such evidence that “a reasonable mind might accept as adequate to support a conclusion.” Id. at 508, 388 A.2d at 825 (internal citations omitted). Finally, the term substantial evidence questions whether the actions of the zoning board were reasonable given the evidence that the zoning board had before it. See id. (internal citations omitted).

While conducting its review of the entire record, the Superior Court “lacks authority to weigh the evidence, to pass upon the credibility of witnesses, or to substitute [its] findings of fact for those made at the administrative level.” Lett v. Caromile, 510 A.2d 958, 960 (R.I. 1986). The reviewing court must give deference to the zoning board’s findings. Pawtucket Transfer Operations, LLC, 944 A.2d at 859. This deference is attributable to the fact that the local zoning boards presumably have knowledge concerning matters that relate to an effective administration of their zoning ordinances. Id. Thus, the court confines its review to search the record to determine “whether the board’s decision rests upon ‘competent evidence’ or is affected by an

error of law.”’ Munroe v. Town of E. Greenwich, 733 A.2d 703, 705 (R.I. 1999) (quoting Kirby v. Planning Bd. of Review of Middletown, 634 A.2d 285, 290 (R.I. 1993)). If the zoning board’s decision is clearly erroneous or affected by error of law in view of the reliable, probative, and substantial evidence contained in the whole record, then the Superior Court may vacate or remand the zoning board’s decision. See Bernuth v. Zoning Bd. of Review of New Shoreham, 770 A.2d 396, 399 (R.I. 2001) (citing G.L. § 45-24-69).

III

Analysis

Appellants challenge the Zoning Board’s Decision claiming that the Zoning Board’s interpretation of the Use Table was affected by error of law and that the plain meaning of section 59 of the Use Table is inconsistent with the Zoning Board’s Decision. In the Appellants’ response to the Zoning Board and intervenor’s opposition memorandum, the Appellants further challenge the Zoning Board’s authority to decide whether an industrial park containing an asphalt plant is eligible for a special use permit.

The Zoning Board counters that the only issue before this Court is whether section 59 of the Use Table regarding industrial parks permits the Appellants to construct an asphalt plant—another otherwise prohibited use—on the Property. The Zoning Board and intervenor both argue that the Zoning Board’s Decision should be upheld. They argue that the Zoning Ordinance is clear and unambiguous. Alternatively, the Zoning Board argues that even if this Court were to find that the Zoning Ordinance was vague, the Court should still defer to the Zoning Board’s interpretation of the Zoning Ordinance and uphold the Zoning Board’s Decision. Within its memorandum, the intervenor also argues that even if the Appellants’ proposed use was specially permitted, the Applicants failed to satisfy the criteria necessary for issuance of a special use

permit. Further, the Zoning Board and the intervenor both argue that because the Appellants did not challenge the Zoning Board's authority to determine whether the Appellants' proposed use was a specially permitted use at the hearing, the Appellants waived this argument.

A

The Zoning Board's Authority

In their Complaint and initial memorandum to the Court, Appellants primarily took issue with the Zoning Board's Decision. However, in their Reply to the Zoning Board's Brief in Opposition, Appellants claim that the Zoning Board was without authority to render its decision. The Appellants contend that the Zoning Board acted ultra vires in denying the Appellants' application and that the Zoning Board usurped the authority of the Zoning Inspector. The Zoning Board and the intervenor contend that the Appellants waived the argument put forth by the Appellants in their reply memorandum because the Appellants did not raise the issue before the Zoning Board.

In Rhode Island, there is no case law which expressly addresses whether the raise-or-waive rule applies to zoning appeals before the Superior Court. In East Bay Cmty. Dev. Corp. v. Zoning Bd. of Review of Barrington, 901 A.2d 1136, 1153 (R.I. 2006), the Rhode Island Supreme Court even noted that it "has not explicitly held that the raise-or-waive doctrine applies to administrative proceedings." Id. However, in that case, the Court determined that it did not need to decide that issue. See id.

In this case, it is, at best, arguable whether the issue has been raised below. It appears that the Appellants did argue at the hearing that a special use permit is almost a matter of right and that the purview of the Zoning Board was only to ensure that the proposed use met the five criteria for issuance of a special use permit. Hr'g Tr. 123:00-1:24:52. However, counsel for

Appellants also stated at the hearing that they were before the Zoning Board because they “went before [the Zoning Inspector] and were denied [the] zoning certificate” and were told that they “needed to go to the planning and before [the] board for this use.” Hr’g Tr. 1:20-1:39; see also Hr’g Tr. 103:40-104 (“We made an application for the bituminous concrete plant to the zoning enforcement officer and under this code 59 we were directed to get a special use permit and to go to planning and we concur with that.”); Hr’g Tr. 113:30-114:15 (“The zoning enforcement officer says it requires a special use permit.”).

Moreover, the certificate issued by the Zoning Inspector specifically stated that the “proposed use, structure or sign . . . DOES NOT conform to the provisions of the Town of Exeter Zoning Ordinance.” See Zoning Certificate. Accordingly, the Zoning Inspector directed Appellants to the Zoning Board for a special use permit and to the Planning Board for a Development Plan Review. See Zoning Certificate. Hence, assuming that the issue was properly raised and that the Zoning Inspector possessed the authority that Appellants ascribe to him, there is no support for the proposition that he approved the use. More importantly, there is no support for the challenge to the Zoning Board’s authority because ultimate authority does not lie in the Zoning Inspector.

The Zoning Ordinance provides the Zoning Inspector with the responsibility for “administration and enforcement” of the Zoning Ordinance, but not with the authority to approve of non-specified uses. Article I, § 1.6.A. The Zoning Ordinance states, “[n]o zoning certificate may be issued by the zoning inspector for any use not specifically permitted in this ordinance” without action of the Zoning Board or the Town Council. Id. The plain meaning of this provision of the Zoning Ordinance is that the Zoning Inspector is only permitted to issue zoning certificates for uses contained within the Use Table. See Pawtucket Transfer Operations, LLC,

944 A.2d at 859 (citing Park v. Rizzo Ford, Inc., 893 A.2d 216, 221 (R.I. 2006) (noting that when interpreting an ordinance, the court must give the “unambiguous language in an ordinance its plain . . . meaning”). In addition, the Zoning Ordinance specifically foresees that a Zoning Inspector may issue a certificate for a use that is not approved in order to “provide guidance or clarification” which may then be appealed to the Zoning Board. Article I, § 1.6.A.

While the Appellants argue that the Zoning Inspector has the “sole authority” to decide which proposed land uses are permissible in the Town of Exeter and that the Zoning Inspector’s decisions are final, the Zoning Board, not the Zoning Inspector, is charged with interpretation of the Zoning Ordinance. Article I, § 1.2.116; Article I, § 1.2.118; see also Olean v. Zoning Bd. of Review of Lincoln, 101 R.I. 50, 52, 220 A.2d 177, 178 (1966) (holding that it is the purview of the zoning board to hear appeals of administrative officers charged with enforcements of zoning ordinances); Davis v. Zoning Bd. of Review of Warwick, 93 R.I. 484, 488, 176 A.2d 735, 738 (1962).

To charge the Zoning Inspector with the ultimate interpretation of the Use Table in the Zoning Ordinance would require the Zoning Inspector to act in excess of his statutory authority. Pawtucket Transfer Operations, LLC, 944 A.2d at 859 (evidencing that a zoning board has the authority to override a zoning official’s grant of a use permit). Appellants’ counsel appeared to confirm that that was the case in this matter when he advised the Zoning Board that they “went before [the Zoning Inspector] and were denied [the] zoning certificate” and were told that they “needed to go to the planning and before [the] board for this use.” Hr’g Tr. 1:20-1:39. Hence, not only is there no support for the proposition that the Zoning Inspector approved the use, there is also no support for the proposition that the Zoning Board’s role was only ministerial and

secondary to that of the Zoning Inspector. Even if Appellants did raise and preserve the issue, their argument is without merit.

B

Zoning Ordinance Language

As noted, Appellants' original argument was that the Zoning Board erroneously interpreted the Use Table. The Appellants argue that this appeal is "simple," as it rests on whether section 59 of the Use Table allows the Appellants' desired use.

The Zoning Ordinance outlines when an owner should apply for a special use permit. The Zoning Ordinance states: "The zone use table, as presented in article II, specifies the uses requiring special use permits in each district. Only such uses as specified in the above-referred table shall be eligible to receive [a] special use permit in each respective district; any use not listed is specifically prohibited." Article I, § 1.3.F of the Zoning Ordinance. The Use Table specifically lists sixty-eight special uses, including:

"Industrial parks, meaning a cluster of two or more industrial businesses with communal parking facilities, planned and built as an entity or subdivision of an area within an individual district[.]" Article I, § 2.4.59 of the Zoning Ordinance.

If Appellants sought only to build an industrial park, the question would most likely be "simple," as Appellants suggest. However, Appellants seek to operate an enclosed asphalt plant on one of the two proposed lots. The Zoning Board denied the permit because the Zoning Board found that an asphalt plant was not specified in the Use Table and, hence, was a specifically prohibited use within the Town of Exeter. See Zoning Board's Decision at 5.

This Court reviews issues of ordinance interpretation de novo. Pawtucket Transfer Operations, LLC, 944 A.2d at 859. Courts use the principles and rules of statutory construction to interpret zoning ordinances. Mongony v. Bevilacqua, 432 A.2d 661, 663 (R.I. 1981). While a

zoning board's interpretation of an ordinance is clearly "not binding on the reviewing court, [the zoning board's interpretation] 'may be reviewed to determine what the law is and its applicability to the facts.'" Pawtucket Transfer Operations, LLC, 944 A.2d at 859 (quoting Narragansett Wire Co. v. Norberg, 118 R.I. 596, 607, 376 A.2d 1, 6 (1977)). When this Court is interpreting language of a zoning ordinance, it must give "clear and unambiguous" provisions within the ordinance their "plain and ordinary meaning." Id. (citing Park, 893 A.2d at 221). Under no circumstances should the court interpret a provision within an ordinance in a way that would reach an absurd or meaningless result. McCain v. Town of N. Providence ex rel. Lombardi, 41 A.3d 239, 243 (R.I. 2012). When a statute does not define a relevant term, courts will apply a definition that is "in accordance with the legislative intent and to prevent absurdity and advance justice." Norman J. Singer, Southerland Statutes and Statutory Construction § 47:7 (7th ed. 2014). If the Court finds that the zoning ordinance is unclear or ambiguous, then the Court must determine the legislative intent behind the zoning ordinance and enforce the zoning ordinance as intended. Pawtucket Transfer Operations, LLC, 944 A.2d at 859 (citing State v. Fritz, 801 A.2d 679, 682 (R.I. 2002)). Thus, where the provisions of a zoning ordinance are "unclear or subject to more than one reasonable interpretation, the construction given by the agency, or board, charged with its enforcement is entitled to weight and deference, as long as that construction is not clearly erroneous or unauthorized." Id. at 859-60 (citing Flather v. Norberg, 119 R.I. 276, 283 n.3, 377 A.2d 225, 229 n.3 (1977)). This deference should be applied even if other reasonable interpretations of the ordinance exist. See id. at 860 (citing In re Lallo, 768 A.2d 921, 926 (R.I. 2001)).

The Town of Exeter Zoning Ordinance states that any use not listed in the Use Table is specifically prohibited. Article I, § 1.3.F; Article II, § 2.3.2 of the Zoning Ordinance. The

Zoning Ordinance reiterates this point in Article I, Article II, and at the end of the Use Table. See West v. McDonald, 18 A.3d 526, 538 (R.I. 2011). The Use Table identifies numerous allowable uses, such as scientific and research laboratories (Section 30), freight or trucking terminals (Section 33), gasoline filling stations (Section 51), metal fabrication (Section 57), manufacture of machine tools (Section 58), and junk or salvage yards (Section 61). The Use Table has no use that directly refers to an asphalt plant. See Article II, § 2.4.1.68. However, because the Use Table lists industrial parks as a permissible use, Appellants argue that according to Article II, § 2.4.1.59, any industrial use is allowed as long as it is carried out in an industrial park. Such an interpretation would eviscerate the plain meaning of the Use Table.

According to Appellants, use 59 in the Use Table is “sufficiently vague that any industrial use is permitted within an industrial park.” Hr’g Tr. at 1:04:00-1:04:25.⁴ The Court disagrees. The Use Table is not vague. On the contrary, it clearly states that “[o]nly such uses as specified in the above-referred table shall be eligible to receive [a] special use permit in each respective district; any use not listed is specifically prohibited.” Article I, § 1.3.F.A.

Here, the Zoning Board discussed the applicability of Article II, § 2.4.1.59 regarding industrial parks to the Appellants’ application. The Zoning Board correctly found that any industrial use that is proposed to be located within an industrial park must be a use that is permitted or specially permitted in the Use Table. Further, the Zoning Board determined that the Use Table does not permit or specially permit the construction or operation of an asphalt plant. To interpret the Zoning Ordinance in accordance with the Appellants’ arguments would be inconsistent with the law of statutory/ordinance interpretation. McCain, 41 A.3d at 243.

⁴ Counsel for Appellants claimed that the Use Table is so vague that it would even allow for the building of a nuclear power plant on one of the two lots. Hr’g Tr. at 1:04:00-1:05:30.

Moreover, the Zoning Board correctly placed weight on the fact that the Town Council did not provide for the operation of an asphalt plant within the Use Table. Zoning Board Decision at 6; Hr’g Tr. at 1:18:05-1:19:05. This omission is significant because, in accordance with the principles of statutory construction, when dealing with a purportedly exhaustive list, as is the case with the Use Table, “[t]he intent of the legislature is expressed by omission as well as by inclusion.” Norman J. Singer, Southerland Statutes and Statutory Construction § 47:23 (7th ed. 2014) (internal quotations omitted).

This Court finds that the Zoning Board’s interpretation of the Zoning Ordinance is consistent with the Town Council’s legislative intent in enacting the Zoning Ordinance. Under the Appellants’ interpretation, any industrial use, even a nuclear power plant, would be eligible for a special use permit in the Town of Exeter if it were contained within an industrial park. Hr’g Tr. 1:05:30-1:06:30; see also McCain, 41 A.3d at 243, 247. However, the Zoning Ordinance specifically limits the Zoning Inspector and Zoning Board’s authority to grant special use permits, providing an exhaustive list of uses eligible for a special use permit. See Article I, 1.1.6; Article I, §1.3.F; Article II, § 2.4 of the Zoning Ordinance.

Finally, the Court finds the Zoning Board’s interpretation of the Zoning Ordinance is not clearly erroneous considering the evidence before the Zoning Board, even if the Use Table were to be construed as vague. It is understood that where a zoning ordinance is vague, the court will generally construe the ordinance in favor of the landowner. See Champagne v. Zoning Bd. of Review of Smithfield, 99 R.I. 283, 286, 207 A.2d 50, 52 (1965). However, if the interpretation of the agency charged with interpreting the ordinance is not clearly erroneous and/or unauthorized based on the record and appears consistent with the town council’s intent in enacting the ordinance, then the court will afford that interpretation weight and deference.

Pawtucket Transfer Operations, LLC, 944 A.2d at 859-60. The Zoning Board's interpretation is consistent with the language of the Zoning Ordinance.

This Court defers to the Zoning Board's interpretation of the Zoning Ordinance, as this Court finds the Zoning Board's interpretation is not in violation of statutory authority or ordinance provisions. See id. (citing Flather v. Norberg, 119 R.I. 276, 283 n.3, 377 A.2d 225, 229 n.3 (1977)). Accordingly, this Court affirms the Zoning Board's Decision finding that the Appellants' proposed use is prohibited and thus ineligible for consideration of a special use permit.

IV

Conclusion

After review of the entire record, this Court is satisfied that the Zoning Board's interpretation of the Zoning Ordinance was not clearly erroneous, affected by error of law, or in excess of statutory authority. Substantial rights of the Appellants have not been prejudiced. Therefore, this Court affirms the Zoning Board's Decision. Appellants' request for attorney's fees and litigation expenses is denied. See G.L. 1956 §§ 42-92-1, et seq.

Counsel shall submit an appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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et al.

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DATE DECISION FILED: April 1, 2016

JUSTICE/MAGISTRATE: Matos, J.

ATTORNEYS:

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J. William Harsch, Esq.