



appeal is centered on the denial of an application to construct an addition to the Cottage.  
*Id.*

The Cochs' son, Laurence Coch, and his wife, Sheila Tumilty, have lived in the Cottage since 2009. (Little Compton Zoning Board Hr'g Tr. 10:1-5, Mar. 16, 2022 (Hr'g Tr.)) The Cottage is 2,250 square feet, with two bedrooms and three-and-a-half bathrooms with a patio, small kitchen, and unfinished basement. *Id.* at 10:20-23, 36:13-24. On August 27, 2021, the Cochs applied for a building permit to construct an addition on the south side of the Cottage that would increase the building footprint by 703 square feet and increase the existing gross floor area by 1,148 square feet. (Certified Zoning Board Records (Records) 4 (Appl. for Appeal).)<sup>1</sup>

Little Compton Building Official Peter Medeiros denied the building permit, stating that “[t]he expansion of an accessory family dwelling is not permitted as per Little Compton Town Ordinance § 14.5.5(b)(5).” *Id.* at 9. (Building Plan Review & Final Permit Approval.) The Cochs appealed the denial to the Zoning Board on October 28, 2021 and submitted a revised copy of their appeal on November 5, 2021, after receiving comments from the Little Compton Zoning Board Administrative Officer, Stetson Eddy. *See* Records 2, 31 (Appl. for Appeal); Letter to Zoning Bd., Mar. 3, 2022.

The Zoning Board hearing occurred on March 16, 2022 and included testimony from Laurence Coch; Professional Planner and Land Use Expert, Joseph Lombardo; and Building Official, Peter Medeiros. *See* Hr'g Tr.; Records 61-68 (Zoning Bd. Decision). The Zoning Board denied the Cochs' appeal on the record at the March 16, 2022 hearing

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<sup>1</sup> The Certified Zoning Board Records are provided as a sixty-nine-page collection of documents without separation and will be identified in this Decision by the page number in the record followed by the title of the document on that particular page.

based on concerns about setting a precedent for accessory dwellings that are larger than principal structures. (Hr'g Tr. 40:13-19, 42:3-12.) The Zoning Board issued its written decision on April 5, 2022. (Records 61-68 (Zoning Bd. Decision).) On April 20, 2022, the Cochs timely filed a Complaint in the Superior Court appealing the Zoning Board's decision pursuant to §§ 45-24-31(4) and 45-24-69(a). (Compl. 1.)

## II

### Standard of Review

“The Superior Court’s authority to review a zoning board’s decision derives from G.L. 1956 § 45–24–69(d)[.]” *Iadevaia v. Town of Scituate Zoning Board of Review*, 80 A.3d 864, 869-70 (R.I. 2013).

Section 45–24–69(d) 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.”

Section 45–24–69(d).

“The Superior Court gives deference to the findings of a local zoning board of review.” *Pawtucket Transfer Operations, LLC v. City of Pawtucket*, 944 A.2d 855, 859

(R.I. 2008). The Superior Court’s deference to a zoning board’s determination is “due, in part, to the principle 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.’” *Id.* (citing *Monforte v. Zoning Board of Review of East Providence*, 93 R.I. 447, 449, 176 A.2d 726, 728 (1962)).

### III

#### Analysis

“When interpreting an ordinance, [the Court] employ[s] the same rules of construction that we apply when interpreting statutes.” *Freepoint Solar LLC v. Richmond Zoning Board of Review*, 274 A.3d 1, 6 (R.I. 2022) (quoting *Ryan v. City of Providence*, 11 A.3d 68, 70 (R.I. 2011)). “[W]hen a statutory section is clear and unambiguous, [the Court] appl[ies] the plain and ordinary meaning of the statute and we need not delve into any further statutory interpretation.” *Grasso v. Raimondo*, 177 A.3d 482, 489 (R.I. 2018) (citing *State v. Diamante*, 83 A.3d 546, 548 (R.I. 2014)). Little Compton Zoning Ordinances § 14-5.5(b) discusses requirements for accessory family dwelling units, establishing that an accessory family dwelling unit shall be permitted “as of right.” Little Compton, R.I., Ordinances ch. 14, art. 5, § 5(b). The size of the accessory family dwelling unit is discussed in § 14-5.5(b)(5).

“The size of any proposed accessory family dwelling unit shall be restricted to 40% of the gross floor area of the principal structure, but not less than 400 square feet. If the proposed accessory family dwelling is located in an accessory structure, such accessory structure shall contain a gross floor area of not less than 400 square feet at the time of the enactment of this amendment; i.e. the footprint of such structure may not be increased to accommodate a proposed accessory family dwelling unit. The proposed accessory family dwelling unit shall comply in all respects

with the side, rear, and front yard requirements for a single family residence as set forth in this chapter.” Little Compton, R.I., Ordinances ch. 14, art. 5, § 5(b)(5) (2006).

The Cochs argue that § 14.5.5(b) allows for an addition to the Cottage because it addresses the creation of an accessory dwelling unit inside a principal structure rather than an addition to an existing accessory dwelling unit. (Appellants’ Mem. 6.) The Cochs assert that the proposed accessory family dwelling unit is consistent with Little Compton’s Comprehensive Community Plan because the Plan expressly allows accessory dwelling units and encourages affordable housing that allows multiple generations to live in the Town. *Id.* at 9.

The Zoning Board argues its decision was supported by substantial and competent evidence, emphasizing that it considered testimony from multiple witnesses, arguments from both parties, and various evidentiary exhibits. (Zoning Bd.’s Reply Br. (Zoning Bd. Br.) 7.) The Zoning Board asserts that the Cochs have failed to exhaust all administrative remedies and may seek alternative relief through applying for a variance. *Id.* at 9. The Zoning Board argues the Cochs’ request for attorney’s fees and costs should not be awarded under the Equal Justice Act (G.L. 1956 § 42-92-1) because the decision was not “without substantial justification.” *Id.*

Little Compton Ordinance § 14-5.5(b)(5) is clear and unambiguous and should be read using its plain language. Little Compton, R.I., Ordinances ch. 14, art. 5, § 5(b)(5) (2006). The first sentence of § 14-5.5(b)(5) establishes size restrictions for an accessory family dwelling unit, limiting the size of such units to 40 percent of the gross floor area of the principal structure. *Id.* The second sentence creates further specifications if the proposed accessory dwelling is located inside another structure, which is not applicable

to the current facts. *Id.* The third sentence requires that an accessory family dwelling unit comply with other provisions of the chapter regarding single family residences, and it is not at issue here. *Id.*

The Cochs mistakenly read the first sentence of § 14-5.5(b)(5) as applying to accessory family dwelling units built inside of or attached to a principal structure. (Appellants' Mem. 6.) However, only the second sentence applies to such units that are built within another principal structure. The first sentence restricts “*any* proposed accessory family dwelling unit” to 40 percent of the gross floor area of the principal structure. Little Compton, R.I., Ordinances ch. 14, art. 5, § 5(b)(5) (2006) (emphasis added). The Cochs' principal structure is 3,227 square feet and the Cottage is 2,250 square feet. (Records 11 (Building Permit Appl.)) The Cottage already is 70 percent of the size of the principal structure in violation of § 14-5.5(b)(5) before adding the Cochs' proposed addition.

The Zoning Board's interpretation of the statute and denial of the permit is consistent with Little Compton's Comprehensive Plan. The Comprehensive Plan states that Little Compton should “allow multiple generations to call the Town home,” but also notes that future housing developments should “be appropriately scaled.” (Little Compton Comprehensive Plan 51.)<sup>2</sup> No language in the Comprehensive Plan encourages unlimited size for accessory dwelling units or allows for expansion of structures to accommodate families beyond the size limitations expressed in the Little Compton Ordinances. *Id.* In its decision, the Zoning Board specifically notes that several Board

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<sup>2</sup> A copy of the Little Compton Comprehensive Plan was not submitted for the record, but it can be located online. See *Comprehensive Plans*, Little Compton, RI, [https://ecode360.com/LI4093/documents/Comprehensive\\_Plans](https://ecode360.com/LI4093/documents/Comprehensive_Plans) (last visited Feb. 28, 2024).

members expressed concern that approving the building permit would set a precedent for accessory buildings to become larger than the principal dwelling which could affect the Comprehensive Plan. (Records 67 (Zoning Bd. Decision).)

The Building Official and the Zoning Board were correct in denying the Cochs' building permit, and their rulings are not without substantial justification. *See generally* Zoning Bd. Decision. Because they are not a prevailing party in this case, the Cochs are not entitled to attorney's fees and costs under the Equal Access to Justice Act. *See* § 42-92-3(a) ("Whenever the agency conducts an adjudicatory proceeding subject to this chapter, the adjudicative officer shall award to a prevailing party reasonable litigation expenses incurred by the party in connection with that proceeding.").

#### **IV**

#### **Conclusion**

For the reasons stated herein, the Cochs' appeal is denied and the Zoning Board's decision denying the building permit is upheld.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Nicholas L. Coch, et al. v. Town of Little  
Compton Zoning Board of Review, et al.

**CASE NO:** NC-2022-0119

**COURT:** Newport County Superior Court

**DATE DECISION FILED:** March 1, 2024

**JUSTICE/MAGISTRATE:** Lanphear, J.

**ATTORNEYS:**

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